ENABLING ACT

AND

CONSTITUTION

OF THE

STATE OF SOUTH DAKOTA

ENABLING ACT

AND

CONSTITUTION

OF THE

STATE OF SOUTH DAKOTA

1913
BROWN & SAENGER
Sioux Falls, S. D.

THE ENABLING ACT

AN ACT To provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states.

SECTION 1. That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana and Washington, respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the 7th standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the City of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

SEC. 3. That all persons who are qualified by the law of said territories to vote for representatives to the legislative assemblies thereof are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said convention shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionment shall be made by the governor, the chief justice and the secretary of said territories; and the governors of said territories shall, by proclamation order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the fifteenth day of April, 1889; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such conventions issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be 75; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the City of Sioux Falls, on the fourth day of July, 1889, and after organization shall declare on behalf of the people of said proposed states, that they adopt the constitution of the

United States; whereupon the said conventions shall be, and are hereby authorized to form constitutions and state governments for said proposed states respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide by ordinances irrevokable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

SEC. 5. That the convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a convention and state government for a state to be known as South Dakota; provided, that at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls Constitution" or the words "Against the Sioux Falls Constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in Section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection, at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only, as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the union under said constitution as hereinafter provided; but the archives, records and books of

the territory of Dakota shall remain at Bismarck, the capital of North Dakota until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitution," then and in that event it shall be the duty of the convention which will assemble at the City of Sioux Falls on the fourth day of July, 1889, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the constitutional convention of North Dakota and South Dakota to appoint a joint commission to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota, and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

SEC. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present Territory of Dakota, but shall, after the state adopting its constitution is admitted into the union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be; provided, that if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so re-assembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

SEC. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for re-submitting the Sioux Falls constitution of 1885, after having amended the same as provided in Section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection, at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories,

who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided, shall be deemed admitted by congress into the union under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two; and the representatives to the Fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted to the union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

SEC. 10. That upon the admission of each of said states into the union Sections numbered 16 and 36 in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal sub-divisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that the 16th and 36th Sections embraced in permanent reservations for national purposes shall not, at any time, be subjected to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, 50 sections of the unappropriated public lands within said state, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

SEC. 13. That 5 per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent

fund, the interest of which only shall be expended for the support of common schools within said states respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the Act of February 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota and Montana, respectively, if such states are admitted into the union as provided in this act, to the extent of the full quantity of 72 sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than $10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of 72 entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than $10 per acre; but said lands may be leased in the same manner as provided in Section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for sectarian or denominational school, college or university. The section of land granted by the act of June 16, 1880, to the territory of Dakota, for an asylum for the insane shall, upon the admission of said state of South Dakota into the union, become the property of said state.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An Act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March 2, 1881, together with the buildings thereon, be and the same is, hereby granted, together with any unexpended balances of the money appropriated therefor by said act, to said state of South Dakota, for the purposes therin designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March 2, 1881, for the Territory of Dakota. The penitentiary at Deer Lodge City, Mont., and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

SEC. 16. That 90,000 acres of land to be selected and located as provided in Section 10 of this act, are hereby granted to each of said states, except to the State of South Dakota, to which 120,000 acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of land for such purposes.

SEC. 17. That in lieu of the grant of lands for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and Section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the State of South Dakota: For the school of mines, 40,000 acres; for the reform school, 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the agricultural college 40,000 acres; for the university, 40,000 acres; for the state normal schools, 80,000 acres; for public buildings at the capital of

said state, 50,000 acres; for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres; in all 500,000 acres.

To the State of North Dakota, a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, 100,000 acres; for state normal schools, 100,000 acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a state reform school, 50,000 acres; for the establishment of a deaf and dumb asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grants hereinbefore made for that purpose, 150,000 acres.

To the State of Washington: For the establishment and maintenance of a scientific school, 100,000 acres; for the state normal schools, 100,000 acres; for public buildings at the state capital in addition to the grant hereinbefore made for that purpose, 100,000 acres; for state, charitable, educational, penal and reformatory institutions 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof for the use and the benefit of the common schools of said states.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

SEC. 20. That the sum of $20,000 or so much thereof as may be necessary is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of $40,000 is so appropriated, $20,000 each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

SEC. 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth judicial district, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States Attorney and one United States Marshal. The judge of each of said districts shall receive a yearly salary of $3,500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said court shall be held in each dis-

trict, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district court. The circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts, and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require; provided that the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the Supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts herein named shall, respectively be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

SEC. 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such circuit, district and state courts respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act shall be pending in any territorial

court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union but the same shall be transferred and proceeded with in the proper United States circuit, district or state court as the case may be; provided, however, that in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper state courts.

SEC. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; and said state government shall remain in abeyance until the states shall be admitted into the union, respectively, as provided in this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States, and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law, and when such state is admitted into the union the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories at the time of their admission into the union shall be in force in said states, except as modified or changed by this act or by the constitutions of the states respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed.

CONSTITUTION OF SOUTH DAKOTA

[Adopted by popular vote October 1, 1889. Yeas, 70,131; Nays, 3,267.]

PREAMBLE.

We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquility, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty, do ordain and establish this Constitution for the State of South Dakota.

ARTICLE I.

NAME AND BOUNDARY.

§ 1. The name of the state shall be South Dakota.

§ 2. The boundaries of the State of South Dakota shall be as follows: Beginning at the point of intersection of the western boundary line of the State of Minnesota, with the northern boundary line of the State of Iowa and running thence northerly along the western boundary line of the state of Minnesota to its intersection with the 7th standard parallel; thence west on the line of the 7th standard parallel produced due west to its intersection with the 27th meridian of longitude west from Washington; thence south on the 27th meridian of longitude west from Washington to its intersection with the northern boundary line of the State of Nebraska; Thence easterly along the northern boundary line of the State of Nebraska to its intersection with the western boundary line of the State of Iowa; thence northerly along the western boundary line of the state of Iowa; thence east along the northern boundary line of the State of Iowa to the place of beginning.

ARTICLE II.

DIVISION OF THE POWERS OF GOVERNMENT.

The powers of the government of the state are divided into three distinct departments—the legislative, executive and judicial; and the powers and duties of each are prescribed by this constitution.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

§ 1. The legislative power shall be vested in a legislature which shall consist of a senate and house of representatives. Except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, (except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.)

Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the legislature or any member thereof of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section.

(The foregoing section (§1) was submitted in its present form by the legislature in 1897 as an amendment to the Constitution; (Chap 39, Laws of 1897.) It was adopted by the people at the general election held November 8, 1898.)

AMENDMENTS—EMERGENCY CLAUSE—TENURE OF OFFICE—ENROLLED BILLS.

1. Const. Art. 3, § 22, as amended, authorizing the passage of legislative enactments with an emergency clause, should be read as a part of and further exception to Const. Art. 1, § 1, amended, reserving to the people the right to require that legislative enactments, except such as may be necessary for the immediate preservation of the public peace, health, or safety, shall be submitted to a vote of the people; and hence an act passed with such emergency clause is not unconstitutional, and will take effect on its passage and approval.

2. The power to regulate the terms of office of the members of such board is in the legislature and Act March 2, 1901, is valid.

3. An enrolled bill filed in the office of the secretary of state is conclusive in the courts that all provisions of the constitution requiring certain acts to be done in the passage of bills have been complied with.

State ex rel. Lavin et al. v. Bacon et al., 14 S. D., 394, 85 N. W. 605.

§ 2. The number of members of the house of representatives shall not be less than seventy-five, nor more than one hundred and thirty-five. The number of members of the senate shall not be less than twenty-five nor more than forty-five.

The sessions of the legislature shall be biennial except as otherwise provided in this Constitution.

§3. No person shall be eligible to the office of senator who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have attained the age of twenty-fie years, and who shall not have been a resident of the state or territory for two years next preceding his election.

No person shall be eligible to the office of representative who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have been a resident of the state or territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of congress, or person holding any lucrative office under the United States, or this state, or any foreign government, shall be a member of the legislature; *Provided*, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters, whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the legislature or become a member thereof.

§ 4. No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crime, nor any person who has been, or may be collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the legislature or to any office in either branch thereof.

§ 5. The legislature shall provide by law for the enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at its first regular session, after each enumeration and also after each enumeration made by authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians, not taxed, and soldiers and officers of the United States army and navy. *Provided*, that the legislature may make an apportionment at its first session after the admission of South Dakota as a state.

CENSUS—LEGISLATION—APPORTIONMENT.

Article 3, Sec. 5, is mandatory, but since there is no power that can compel a legislature to take affirmative action in enacting laws, its action under the constitutional provision depends solely on its own volition, guided by its sense of public duty and responsibility.

In case the legislature should fail to provide for the enumeration as required by the Constitution, the existing apportionment would remain in force.

In re State Census, 6 S. D. 540, 62 N. W., 129.

§ 6. The terms of the office of the members of the legislature, shall be two years; they shall receive for their services the sum of five dollars for each day's attendance during the session of the legislature, and ten cents for every mile of necessary travel in going to and returning from the place of meeting of the legislature on the most usual route.

Each regular session of the legislature shall not exceed sixty days, except in cases of impeachment, and members of the legislature shall receive no other pay or perquisite except per diem and mileage.

(The foregoing section (§6) was amended at the general election held in November, 1892, by reducing the mileage of the members from "ten" to "five" cents per mile.)

§ 7. The legislature shall meet at the seat of government on the first Tuesday after the first Monday of January at 12 o'clock m., in the year next ensuing the election of members thereof, and at no other time except as provided by this constitution.

§ 8. Members of the legislature and officers thereof, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court, or the presiding officer of either house, in the hall of the house to which the member or officer is elected, and the secretary of state shall record and file the oath subscribed by each member and officer.

Any member or officer of the legislature who shall refuse to take the oath herein prescribed shall forfeit his office.

Any member or officer of the legislature who shall be convicted of having sworn falsely to or violated his said oath, shall forfeit his office and be disqualified thereafter from holding the office of senator or member of the house of representatives or any office within the gift of the legislature.

§ 9. Each house shall be the judge of the election returns and qualifications of its own members.

A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such a manner and under such penalty as each house may provide.

Each house shall determine the rules of its proceedings, shall choose its own officers and employees and fix the pay thereof, except as otherwise provided in this constitution.

§ 10. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

§ 11. Senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same; and for words used in any speech or debate in either house, they shall not be questioned in any other place.

§ 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the governor, the governor and senate, or from the legislature during the term for which he shall have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature during the term for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the state or any county therof, authorized by any law passed during the term for which he shall have been elected.

LEGISLATOR—APPOINTMENT DURING TERM TO OTHER OFFICE—ATTORNEY GENERAL—STATE'S ATTORNEY—R. R. COMR'S COMPENSATION.

Laws 1897, Chapter 110, Section 41, prescribing certain duties of the attorney general and state's attorneys, authorizes the railroad commissioners to employ additional legal counsel, and the general appropriation bill for the same year, (Laws 1897, Chapter 10, Section 20), contains the item: "For litigation fund for biennial period of 1897 and 1898, $4,500." Held, that an attorney who was chosen a member of the legislature for the biennial period beginning January 1, 1897, cannot collect for services rendered the railroad commissioners during 1897.

Palmer v. State, 11 S. D., 78, 75 N. W. 818.

§ 13. Each house shall keep a journal if its proceedings and publish the same from time to time, except such parts as require secrecy, and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.

EVIDENCE—JOURNALS—STATUTES—VALIDITY.

The journals of the two houses of the legislature are not competent to impeach the validity of a statute enrolled and authenticated by the proper officers.

Narregang v. Brown County et al., 14 S. D., 357, 85 N. W. 602, App. 510, 997, ev. 520.

§ 14. In all elections to be made by the legislature the members thereof shall vote *viva voce* and their votes shall be entered in the journal.

§ 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

§ 16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 17. Every bill shall be read three several times, but the first and second reading may be on the same day, and the second reading may be by title of the bill, unless the reading at length be demanded. The first and third readings shall be at length.

INSURANCE—POLICY—FORM OF.

Rev. Civ. Code, § 664, providing that the State Insurance Commissioner shall keep on file in his office printed forms, in blank, of a contract or policy

of fire insurance, and that the Commissioner shall, as near as the same can be applicable, conform to the type and form of the New York standard fire insurance policy, is repugnant, in so far as it delegates to the Commissioner power to prescribe the form of policy to be used, to Const. Art. 3, § 17, requiring every bill to be read twice, at length, that the lawmakers may know what they are doing, and hence he has no power to compel insurance companies to use any particular form of fire insurance policy.

Phenix Ins. Co., of Brooklyn, N. Y., et al. v. Perkins, Commissioner of Insurance, 19 S. D., 59, 101 N. W. 1110.

§ 18. The enacting clause of a law shall be: "Be it enacted by the legislature of the State of South Dakota" and no law shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon the final passage shall be taken upon its last reading, and the yeas and nays, shall be entered upon the journal.

§19. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read immediately before signing, and the fact of signing, shall be entered upon the journal.

LEGISLATION — JOINT RESOLUTION — TITLES—EVIDENCE—PROHIBITION—AMENDMENT—SUBMISSION.

1. Although the constitution does not require a joint resolution to have a title, it presupposes it will have one; and, where the title to a joint resolution is adopted after due consideration, it may be referred to and considered by the court for the purpose of ascertaining the intention of the two houses in adopting the resolution, if there is doubt as to that intention.

2. Laws 1895, Chap. 38, is: "House Joint Resolution proposing an amendment to the Constitution—A joint resolution to amend the Constitution of the State of South Dakota by repealing Article 24 thereof, relating to prohibition, and submitting the same to a vote of the people. Be it resolved by the house of representatives of the State of South Dakota, the senate concurring: Section 1. (Question submitted.) That at the general election to be held in the state of South Dakota on the first Tuesday after the first Monday in November, 1896, there shall be submitted to a vote of the qualified electors of the state of South Dakota the following question: "Shall Article 24 of the Constitution be repealed?" Held, that such joint resolution, read in connection with the title, shows that an amendment to the Constitution by striking out Article 24, relating to prohibition, was proposed and agreed to by the two houses, as required by Const. Art. 23, § 1, which does not prescribe any particular form in which the two houses shall proceed in proposing, agreeing to, or submitting to the people an amendment; and the resolution is not open to the objection that the only proposition agreed to was as to the submission to the people of the question, "Shall Article 24 of the Constitution be repealed?"

3. The manner in which the question of the proposed amendment was submitted to the people was sufficient, and not misleading, though somewhat informal, under Laws 1895, Chap. 86, § 1.

4. Since the proposition was not to add anything to the constitution, but simply to strike out an article without adding or substituting anything in its place, the proceedings to effect the amendment are not assailable on the ground that if the proposition, "Shall Article 24 of the Constitution be repealed?" as voted on by the electors, be added to that instrument, it would not have the effect to change or amend it.

5. Proceedings to amend the Constitution are not invalidated because the proposed amendment is not "printed upon each ticket on the ballot," as required by laws 1895, Chap. 86, all the other steps being as required by law.

Lovett v. Ferguson, 10 S. D., 44, 71 N. W., 765.

§ 20. Any bill may originate in either House of the legislature, and a bill passed by one house may be amended in the other.

§ 21. No law shall embrace more than one subject, which shall be expressed in its title.

STATUTES — SUBJECT — TITLE—INTERPRETATION — CONSTRUCTION INTERSTATE COMMERCE.

1. If a party assail the Constitutionality of an act, he must show beyond reasonable doubt that it is in violation of the fundamental law of government. Every presumption is in favor of the validity of a legislative enactment, and it is for the attacking party to show that his rights are invaded by that act, and that it does not come within the legitimate exercise of the lawmaking power, under the Constitution.

2. The object of Section 21 of Article 3 of the Constitution of the state, was to prevent the bringing together in one act, subjects having no necessary connection or relation with each other, and to guard the legislatures and communities affected by the law against surprise and imposition; and it is mandatory,—a direct, positive, and imperative limitation upon the legislature.

3. Sec. 21 was not intended to embarrass the legislature in the legitimate exercise of its powers by compelling a needless multiplication of bills designed to meet the same object. A liberal interpretation and construction should be given it by the courts so as not to cripple or limit legislative enactments any further than is necessary for the requirements of the law. The ground that an act embraces more than one subject, and that it was not sufficiently expressed in its title, should be grave, and the conflict between the statute and Constitution plain and manifest, before courts will be justified in declaring it unconstitutional and void.

4. When the title of a legislative act expresses a general subject or purpose which is single, all matters which are naturally and reasonably included in it, and all measures which will or may facilitate the accomplishment of the purpose, are germane to its title. The title must express the subject comprehensively so as to include all the provisions in the body of the act. It need not index all its details, but it should indicate the purpose of the legislature in the enactment.

5. A portion of a statute may be unconstitutional and stricken out, and if that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which is rejected, the statute must be sustained.

6. If, upon examination, the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose.

7. Mercantile or commercial agencies are not such legitimate and useful instruments of commerce or commercial intercourse as to put them exclusively under the regulation of Congress, and free from state control, and a legislative enactment providing for the organization of such companies, and the regulation of their business within the limits of the state, is not an interference with interstate commerce, and is not void because in violation of the commerce clause of Section 8, of Article 1, of the Constitution of the United States.

State v. Morgan, 2 S. D., 32, 48 N. W., 314.

STATUTES—CONSTRUCTION—TITLE—INTOXICATING LIQUOR.

1. It is only when the collision between the legislative and the constitutional law is certain and inevitable that the courts feel justified in declaring a law void.

2. The object of Section 21, Art. 3, of the Constitution, is to prevent bringing together into one act measures diverse and foreign to each other,

with a view of combining the friends of each, and thus to accomplish the passage in one law of the several measures, which could not have passed on their individual merits, and also to prevent the insertion into bills of matter or measures of which the title gave no notice, and thus to deceive and mislead individual legislators and the public generally.

3. The disposition of the courts is to construe this constitutional provision liberally, rather than to embarrass or defeat legislation by a construction the strictness if which, is unncessary to accomplish the beneficial purposes for which it was adopted.

4. The reason for the rule that duplicity in the title and in the law is fatal to the law is the inability of the court to determine which of the different subjects named, the legislature intended as the subject of the law, and when the reason fails the rule fails, and so the rule applies only where such inability actually exists.

5. As to chapter 101, Laws of 1890, Sec. 12, there is no such inability, for its title expressly declares that it is intended to enforce "the provisions of Article 24 of the Constitution," and the provisions of that article cover only the manufacture, sale, and keeping for sale of intoxicating liquors, and not the use of such liquors; so that if it were, for any reason, incompetent for the legistature, in that law to legislate against the use of such liquors, the subject of the use might be dropped from both the title and the law, If, such subject being rejected, that which remains is a complete and sensible law, and capable of being executed in accordance with the apparent legislative intent.

6. It is not necessary, in order to make such rejection allowable, that the obnoxious subject or matters be contained in independent provisions. The test is whether they are essentially and inseparably connected in substance.

7. Whether any portion or provision of a law is invalid because it violates the constitutional rights of a citizen or because it violates a constitutional rule of legislation, its relation to the balance of the law is the same, and may be rejected from the law under the same conditions.

8. The subject of the use of intoxicating liquors may be dropped from the title and from the provisions of the law without affecting the balance of the law.

9. The punishment imposed by section 13, c. 101, laws 1890, for the first offense of keeping and maintaining a common nuisance is not a "cruel punishment," within the meaning of section 23, Art, 6, of the Constitution, and such provision is not unconstitutional on that account.

10. Article 24 of the Constitution declares a policy single in its ultimate purpose and object, but a law for its enforcement must necessarily, and therefore may legally, include the employment of many measures and the attainment of many ends, not as independent objects or subjects of legislation, but as auxiliary to the final purpose sought.

11. It is a well established and wholesome rule of law that no one can take advantage of the unconstitutionality of an independent provision of a law, who has no interest in and is not affected by such provisions.

State v. Becker, 3 S. D., 29, 51 N. W., 1019.

STATUTES—TITLE—SUBJECT—COUNTY BOUNDARIES.

Laws 1897, c. 41, entitled, "An act changing and defining the boundaries of Stanley county," authorized the submission of the question of such change to the voters of the county. Held, that such act was not invalid as embracing more than one subject, not expressed in its title, since, the title to the act being general, it might properly include any provisions germane to the main subject.

Stuart et al. v. Kirley et al., S. D., 246, 81 N. W., 147.

STATUTES—TITLE—COUNTIES—INDEBTEDNESS—FUNDS.

Laws 1901, c. 94, entitled "An act authorizing counties to fund their outstanding indebtedness," was not a violation of Const. Art. 3, § 21, though the title did not indicate the character of the indebtedness to be funded.

Walling v. Lummis, 16 S. D., 350, 92 N. W., 1063.

STATUTES—TITLE—INTOXICATING LIQUORS—MARRIED WOMEN'S RIGHTS—ACTION.

The provisions of Laws 1897, pp. 210, 211, c. 72, §§ 11, 16, declaring it unlawful for dealers in intoxicating liquors to sell to persons intoxicated, or in the habit of getting intoxicated, and giving a right of action to a married woman for damages from the sale of intoxicating liquors, are restrictions and regulations of the sale and therefore within the title, "An act to provide for the licensing, restriction and regulation of the business of the * * * sale of * * * intoxicating liquors," and not violative of Const. Art. 3, § 21.

Garrigan v. Kennedy et al., 19 S. D., 11, 101 N. W., 1081.

STATUTE—TITLE—LANGUAGE.

The constitutional requirement that the subject of an act shall be expressed in its title, relates to substance and not to form, and the choice of language is a matter within the discretion of the legislature and the requirement is satisfied where the title fairly indicates the purpose of the act, and is not calculated to mislead, though it be not the most appropriate that could have been selected.

Morrow v. Wipf, 115 N. W., 1122.

STATUTE—TITLE.

Const. Art. 3, § 21, must be liberally construed so as not to limit legislative enactments any more than is necessary, and, when the title of an act expresses a general subject or purpose which is single, all matters naturally and reasonably included in it, and all measures which will or may facilitate the accomplishment of the purpose are germane.

Morrow v. Wipf, 115 N. W., 1121.

STATUTES—TITLES—INTOXICATING LIQUOR—ACTION — MARRIED WOMAN'S RIGHTS.

The provision of Laws 1897, pp. 210, 211, c. 72, §§ 11, 16, declaring it unlawful for liquor dealers to sell to persons intoxicated or in the habit of getting intoxicated, and giving a right of action to a married woman for damages from the sale of intoxicating liquors, are restrictions and regulations of the sale, and therefore within the title, "An act to provide for the licensing, restriction and regulation of the business of the * * * sale of * * * intoxicating liquors," and so not violative of Const. Art. 3, § 21.

Palmer v. Schurz, 117 N. W., 150; See state v. Ayres, 8. S. D., 517, 67 N. W. 611.

TAXATION IN UNORGANIZED COUNTY.

See Dupree v. Stanley county, 8 S. D., 30, 65 N. W. 426. See State v. Ayres under Art. 6, Sec. 10.

§ 22. No act shall take effect until ninety days after the adjournment of the session at which it is passed, unless in case of emergency, (to be expressed in the preamble or body of the act) the legislature shall by a vote of two-thirds of all the members elected of each house otherwise direct.

STATUTES—OPERATION—CONTRACTS—EXEMPTIONS—DEBTS.

Laws 1890, Chap. 86, § 2, reducing exemptions previously in force, provided that all acts in conflict therewith were repealed, "save only as to contracts now existing." Held, that one against whom a judgment was rendered on a debt contracted subsequent to the passage of Laws 1890, but prior to the expiration of 90 days from the adjournment of the session at which it was passed, was entitled to claim the exemption previously allowed.

Long v. Collins, Sheriff, et al., 12 S. D., 621, 82 N. W., 95; See also State ex rel.

Lavin et al. v. Bacon under Art. 3, Sec. 1, 14 S. D., 394; See also Art. 4, Sec. 4, In Re Opinion of Judges; See Art. 13, Sec. 4, Walling v. Lummis, 16 S. D., 350, 92, N. W., 1063.

§ 23. The legislature is prohibited from enacting any private or special laws in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns and villages or changing or amending the charter of any town, city or village, or laying out, opening, vacating or altering town plats, streets, wards, alleys and public ground.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the state.
8. Remitting fines, penalties or forfeitures.
9. Granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.
10. Privviding for the management of common schools.
11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable no special law shall be enacted.

STATUTES—SPECIFIC—GENERAL—COUNTIES—BOUNDARIES.

Since it was the function of the legislature to determine whether or not a general law could be made applicable to an unspecified subject, a special act (Laws 1897, c. 41), providing for a change of the boundaries of Stanley county was not in violation of the constitutional provision.

Stuart et al. v. Kirley et al., 12, S. D., 246, 81 N. W., 147; See also Art. 13, §5, Heyler v. City of Watertown, 16 S. D., 25, 91 N. W. 334.

COUNTIES—INSANE—SUPPORT—CHARGES—ESTATE.

Laws 1895, Chap. 98, § 1, making the expenses incurred by a county in caring for an insane person a charge against his estate, where such insane person has no heirs within the United States dependant on said estate for support, does not violate Const. Art. 3, § 23, or Art 6, § 18.

Bon Homme County v. Berndt et al., 13 S. D., 309, 83 N. W., 333.

§ 24. The legislature shall have no power to release or extinguish in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

LIABILITIES—RELEASE.

The legislature having, under Const. Art. 3, § 24, no power to release or extinguish a liability to the state, Laws 1897, c. 84, attempting to release any rights of the state in certain lands, is inoperative.

State v. Mellette, 16 S. D., 298, 92 N. W., 395.

§ 25. The legislature shall not authorize any game of chance, lottery or gift enterprise under any pretense, or for any purpose whatever.

§ 26. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capital site, or to perform any municipal functions whatever.

DELEGATION OF MUNICIPAL FUNCTIONS—COMMISSIONS.

Laws 1905, p. 275, c. 163, creating a board, to be known as the "State Capitol Commission," for the purpose of procuring the erection of a capitol building and authorizing the commission to procure the erection of a build-

ing, adopt plans and specifications, etc., is not in conflict with Const. art. 3, § 26.

Davenport v. Elrod et al., 20 S. D., 567, 107 N. W., 833, Capitol Com'rs.

§ 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

§ 28. Any person who shall give, demand, offer, directly or indirectly, any money, testimonial, privilege or presonal advantage, thing if value to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official or public dutles, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.

The offense of corrupt solicitation of members of the legislature, or of public officers of the state, or any municipal division therof, and any effort toward solicitation of said members of the legislature or officers to influence their official actions shall be defined by law, and shall be punished by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimoney upon the ground that it may criminate himself, but said testimony shall not afterward be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid, shall be disqualified from holding any office or position or office of trust or profit in this state.

ARTICLE IV.

EXECUTIVE DEPARTMENT

§ 1. The executive power shall be vested in a governor who shall hold his office two years. A lieutenant governor shall be elected at the same time and for the same term.

§ 2. No person shall be eligible to the office of governor or lieutenant governor except a citizen of the United States and a qualified elector of the state, who shall have attained the age of 30 years, and who shall have resided two years next preceding the election within the state or territory; nor shall he be eligible to any other office during the term for which he shall have been elected.

§ 3. The governor and lieutenant governor shall be elected by the qualified electors of the state at the time and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but if two or more shall have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

§ 4. The governor shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute laws, suppress insurrection and repel invasion. He shall have power to convene the legislature on extraordinary occasions. He shall, at the commencement of each session, communicate to the legislature by message, information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

LANDS—GRANTS—MILITIA—ENCAMPMENT GROUNDS.

Act. Cong. Oct. 1, 1890, granted lands to the state to be used as a permanent camp and parade grounds, and for such other purposes, in connection with the training and education of the militia, as the legislature may direct, the lands to revert to the United States when the state shall cease to use them for such purposes. Held, that, in the absence of legislative provision,

such lands are in the care and control of the governor, as commander-in-chief of the military forces of the state.

In re opinion of Judges, 13 S. D., 191, 83 N. W., 96.

§ 5. The governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; *Provided*, that in all cases where the sentence of the court is capital punishment, imprisonment for life, or for a longer term than two years, or a fine exceeding two hundred dollars, no pardon shall be granted, sentence commuted or fine remitted, except upon the recommendation in writing of the board of pardons, consisting of the presiding judge, secretary of state and attorney general, after a full hearing in open session, and such recommendation, with the reasons therefor, shall be filed in the office of the secretary of state; but the legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations and reprieves, may be applied for. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve. He shall communicate to the legislature at each regular session each case of remission of fine, reprieve, commutation or pardon, granted by him in the cases in which he is authorized to act without the recommendation of the said board of pardons stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

§ 6. In case of death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

§ 7. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

§ 8. When any office shall, from any cause, become vacant and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

OFFICE—VACANCY—EXECUTIVE POWER—TERM.

1. There being no provision for filling vacancies in Article 14 of the Constitution, creating a board of regents of education, nor in the act of the legislature enacted to carry into effect that article, a vacancy in such board can only be filled by the governor, pursuant to the provisions of Section 8, Art. 4, of the Constitution.

2. By that section, the power of the governor under such conditions to fill a vacancy, is for the unexpired term of the member whose place the appointment is made to fill.

3. When a vacancy is filled by appointment by the governor under the provisions of that section, no confirmation of the appointment by the senate is required.

4. The sections of the Constitution should be construed together, and such a constitution given to them as will give effect to each section, and as far as possible, harmonize their provisions.

5. So construed, the clause of Section 3, Art. 14, should be construed to read, "except in cases of vacancies filled by appointment by the governor."

State ex rel, Holmes, State's Attorney, v. Finnerud, 7, S. D., 237, 64 N. W., 121; See also State ex rel. Lavin v. Bacon, 14 S. D., 284-394, Article 14, Sec. 2, 85 N. W. 225; State ex rel. Wood v. Sheldon, Art. 14, Sec. 3.

§ 9. Every bill which shall have passed the legislature, shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it with his objection to the house in which it originated, which shall enter the objection at large upon the journal and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by its adjournment prevent its return; in which case it shall be filed, with his objection, in the office of the secretary of state, within ten days after such adjournment, or become a law.

§ 10. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in the following manner: If the legislature be in session he shall transmit to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 11. Any governor of this state who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislature shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by threatened use of his veto power, or who offers or promises any member, that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislature or who threatens any member that he, the said governor, will remove any person or persons from any office or position with intent to in any manner influence the official action of said member, shall be punished in the manner now, or that may hereafter be provided by law, and upon conviction thereon shall forfeit all right to hold or exercise any office of trust or honor in this state.

§ 12. There shall be chosen by the qualified electors of the state at the time and places of choosing members of the legislature, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and an attorney general, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government.

§ 13. The power and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands and attorney general shall be as prescribed by law.

SECRETARY OF STATE—FEES—BRAND AND MARK COMMISSION.

Under Laws 1897, c. 90, making the secretary of state a member of the brand and mark committee, and providing that 20 per cent, of the fees paid under said act shall be paid to each member of said state brand and mark committee as full compensation for their services, the secretary of state is entitled to receive such 20 per cent, in addition to his salary as secretary of state, as compensation for his services as a member of the brand and mark committee, notwithstanding Const. Art. 4, * 13; Id. Art. 21, § 2.

State v. Roddie, 12 S. D., 433, 81 N. W., 980; See State v. Becker, 3 S. D., 29, Art. 3, Sec. 21, 51, N. W., 1019.

ARTICLE V.

JUDICIAL DEPARTMENT

§ 1. The judicial powers of the state, except as in this constitution otherwise provided, shall be vested in a supreme court, circuit courts, county courts, and justices of the peace, and such other courts as may be created by law for cities and incorporated towns.

POLICE MAGISTRATE—JURISDICTION—EMBEZZLEMENT.

Comp. Laws, § 7119, designates as examining magistrates police and other special justices appointed or elected in a city, village, or town. Held, that a police justice was authorized to act as a committing magistrate on a prosecution for embezzlement.

State v. Wright, 15 S. D., 628, 91 N. W., 311.

§ 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

MANDAMUS TO INFERIOR COURTS—CITY COUNCIL—EXCEEDING AUTHORITY—INJUNCTION—COMPENSATION OF CITY ATTORNEY—AUTHORITY OF CITY TO EMPLOY ASSISTANTS.

1. Article 5, § 2, materially enlarges the ordinary appellate jurisdiction conferred upon reviewing courts.

2. This added power authorizes this court, by writ of mandamus, to control and correct the proceedings of an inferior court where the action complained of exceeds the jurisdictional powers of such court, or there has been a manifest abuse of discretion, and where the case is urgent, and an appeal will not afford adequate remedy, and the circumstances of the case are such as to require immediate review of the proceedings.

3. The power of this court to issue the writ of mandamus to correct the proceedings of an inferior court necessarily includes the power to review the proceedings of such court, and to determine whether or not the case is a proper one for the exercise of the authority vested in this court.

4. It is one of the fundamental rules of law that the judicial power cannot interfere with the legitimate discretion of any other department of government so long as it does no illegal act, and conducts its business within the limits of the powers conferred upon it and committed to its exercise, and when in the exercise of its powers it is not chargeable with an abuse of discretion.

City of Huron v. Campbell, Circuit Judge, 3 S. D., 309, 53, N. W., 182.

Laws 1897, c. 55, amending Comp. Laws, § 5213, so as to prohibit appeals from circuit to supreme court in actions for the recovery of money where the amount recovered is $75 or less, or for the recovery of personal property of that value or less, is not void under Const. Art. 5, § 2, since such article does not attempt to prescribe the class of cases in which an appeal may be taken.

McClain v. Williams, 10 S. D., 332, 73 N. W., 72; See also State v. Cram, 20 S. D., 160.

MANDAMUS—COUNTY JUDGE—QUALIFICATION—PROBATE.

Under Const. Art. 5, § 2, the supreme court will grant a mandamus compelling a circuit court to receive an application to take jurisdiction to determine the existence of an alleged disqualification of a county judge in a probate proceeding.

Vine et al. v. Jones, Judge, et al., 13 S. D., 54, 82 N. W., 82.

SUPREME COURT—WRIT OF CERTIORARI—ATTORNEY GENERAL—ELECTIONS—UNORGANIZED COUNTIES.

1. Under Sections 2 and 3, Art. 5, of the Constitution of the state, the original jurisdiction of the supreme court includes the power to issue, hear,

and determine a writ of certiorari under such regulations as may be prescribed by law; where judicial questions are involved affecting the sovereignty of the state, its franchise or prerogatives, or the liberties of its people.

2. An affidavit of the attorney general of the state, alleging that the board of county commissioners of an organized county has unlawfully established voting precincts and appointed judges of election and places for holding elections in territory outside of and beyond the limits of its county, to-wit in unorganized counties attached to such organized county "for judicial purposes," and that such acts are in violation of the election laws of the state, and an unlawful interference with the elective franchise of the state, and an injury to the rights and elective franchise of all the citizens of the state, presents a case for the exercise of such original jurisdiction by this court, where there is no writ of error, appeal, or other plain, speedy, and adequate remedy.

3. In such case, the affidavit being made by the attorney general in behalf of the state, it is made by a party "beneficially interested."

4. The power and authority to make such affidavit, and to apply for and prosecute such writ for the review of such proceedings, are inherent in the office of the attorney general upon principles of general law, and do not depend upon any express statute.

5. A writ of certiorari issued under Section 5507, Comp. Laws, authorizing such writ, "when inferior courts, officers, boards, or tribunals have exceeded their jurisdiction," will reach, or bring before the court for review, the proceedings of such board of county commissioners, in respect to the acts so complained of, as in excess of the jurisdiction of said board, where there is no writ of error, appeal, nor, in the judgment of the court, any other plain, speedy, and adequate remedy.

6. Held, there is no writ of error, appeal, nor other plain, speedy, and adequate remedy, and that a writ of certiorari properly issued.

7. Chapter 175, Laws 1887, attaching the unorganized counties of Nowlin and Sterling to Hughes county "for judicial purposes," did not have the effect of so attaching them for election purposes, such act being at once a grant and a limit of jurisdiction.

8. To be attached "for judicial purposes," as in said Chapter 175, is not to be "annexed" within the meaning of Section 535, Comp. Laws.

State ex rel. Dollard, Attorney General, v. Board County Commissioners, Hughes County et al., 1, S. D., 292. 46, N. W., 1127.

§ 3. The supreme court and the judges thereof shall have power to issue writs of *habeas corpus*. The supreme court shall also have power to issue writs of *mandamus, quo warranto, certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same in such cases and under such regulations as may be prescribed by law; *Provided, however*, that no jury trials shall be allowed in said supreme court, but in proper cases, questions of fact may be sent by said court to a circuit court for trial before a jury.

QUO WARRANTO—ELECTIONS—VACANCIES—TERMS DEFINED—APPOINTMENT—JUDICIARY.

1. Section 3, Art. 5, must be understood as intended to give the court jurisdiction of cases in which the information in the nature of quo warranto has become a substitute for the ancient writ.

2. In case of doubt between different constructions claimed for a constitutional or statutory provision or the meaning of a term, it is always allowable to inquire what results would legitimately follow either, with a view of ascertaining, if possible, whether such consequences were contemplated or intended.

3. There is no inherent reserved power in the people to hold an election to fill a vacancy in an elective office.

4. Such election can only be held when, and as authorized by law.

5. In Section 37, Art. 5, the expression "next general election" means the next election at which it is provided by law that the officer may be elected whose office has become vacant.

6. In November, 1892, when the general election was held, there was no law, constitutional or statutory, authorizing the election of a circuit judge, either for a full term or for a fractional term.

7. Until such a law is passed there can be no election of supreme or circuit judges under Section 26, Art. 5.

8. The governor having appointed respondent to the office of circuit judge of the Seventh Judicial circuit to fill a vacancy in said office, such appointment constitutes a good title to such office until the legislature provides by law for the election of his successor.

State ex rel. McGee v. Gardner, 3 S. D., 553, 54 N. W., 606.

INJUNCTION—JURISDICTION OF COURT—INTERPRETS WHAT.

1. Because this court has power to issue writs of mandamus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same, in such cases and under such regulations as may be provided by law, it does not follow that it has jurisdiction to issue an injunction upon any and all occasions. It is clothed with all the powers of a court of equity as understood and defined when the constitution was adopted, but its jurisdiction is limited to such matters as were then of recognized equitable cognizance.

2. Power to amend the Constitution belongs exclusively to the legislature and electors. It is legislation of the most important character. This court has power to determine what such legislation is, what the constitution contains, but not what it should contain. It has power to determine what statutory laws exist, and whether or not they conflict with the Constitution; but it cannot say what laws shall or shall not be enacted. It has the power, and it is its duty, whenever the question arises in the usual course of litigation, wherein the substantial rights of any actual litigant are involved, to decide whether any statute has been legally enacted, or whether any change in the Constitution has been legally effected, but it will hardly be content that it can interpose in any case to restrain the enactment of an unconstitutional law.

State ex rel. Cranmer v. Thorson, 9 S. D., 152-154, 68 N. W., 202.

§ 4. At least two terms of the supreme court shall be held each year at the seat of government.

§ 5. The supreme court shall consist of three judges, to be chosen from districts by qualified electors of the state at large, as hereinafter provided.

§ 6. The number of said judges and districts may after five years from the admission of this state under this constitution, be increased by law to not exceeding five.

§ 7. A majority of the judges of the supreme court shall be necessary to form a quorum or to pronounce a decision, but one or more of said judges may adjourn the court from day to day, or to a day certain.

§ 8. The term of the judges of the supreme court, who shall be elected at the first election under this constitution, shall be four years. At all subsequent elections the term of said judges shall be six years.

§ 9. The judges of the supreme court shall by rule select from their number a presiding judge, who shall act as such for the term prescribed by such rule.

§ 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age, a citizen of the United States, nor unless he shall have resided in this state or territory at least two years next preceding his election and at the time of his election be a resident of the district from which he is elected; but for the purpose of re-election, no such judge shall be deemed to have lost his residence in the district by reason of his removal to the seat of government in the discharge of his official duties.

COUNTY JUDGE—REQUIREMENTS.

One elected to the office of county judge, must be either admitted, or entitled to be admitted, without examination, to practice as an attorney at law in the state.

Jamieson v. Wiggin, 12 S. D., 16, 80 N. W., 137.

§ 11. Until otherwise provided by law, the districts from which the said judges of the supreme court shall be elected shall be consituted as follows:

First District—All that portion of the state lying west of the Missouri river.

Second District—All that portion of the state lying east of the Missouri river and south of the Second standard parallel.

Third District—All that portion of the state lying east of the Missouri river and north of the Second standard parallel.

§ 12. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law, and by the rules of the supreme court not inconsistent with law. The legislature shall make provisions for the publication and distribution of the decisions of the supreme court, and for the sale of the published volumes thereof. No private person or corporation shall be allowed to secure any copyrights to such decisions, but if any copyrights are secured they shall inure wholly to the benefit of the state.

§ 13. The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

SUPREME COURT—OPINION AT REQUEST OF GOVERNOR.

Const. Art. 5, § 13, is confined exclusively to such questions as may raise a doubt in the executive department—never in the legislative—and therefore the court will not, on application by the governor, made at the request of both houses of the legislature, construe a section of the Constitution which declares the number of votes that shall be necessary for the passage of a law, in anticipation of certain rulings under such section by the presiding officers of the legislature; the question involved being one of purely parliamentary procedure.

In re Construction of Constitution, 3 S. D., 548, 54 N. W., 650; See also In re Supreme Court Vacancy, 4 S. D., 532, N. W. 495.

SAME.

Const. Art. 5, § 13, upon request of the governor for an opinion upon the construction of Session Laws 1890, Chap. 6, with reference to the appointment of regents of education, involving the duration of the terms of office of certain regents, an opinion thereon should not be given, as involving rights of persons not given an opportunity to be heard.

In re Chapter 6, Session Laws of 1890, 8 S. D., 274, 66 N. W., 310.

SAME.

An opinion as to the constitutionality of House Joint Resolution, Laws 1897, Chap. 83, cannot be given under Const. Art. 5, § 13, since said resolution involves the personal right of certain parties to hold commissioned offices and to be paid for services already rendered.

In re House Resolution No. 30, 10 S. D., 249, 72 N. W., 892.

§ 14. The circuit court shall have original jurisdiction of all actions and causes, both at law and in equity, and such appelate jurisdiction as may be conferred by law and consistent with this constitution; such jurisdiction as to value and amount and grade of offense may be limited by law. They and the Judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus, mandamus, quo warranto, certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

CIRCUIT COURT—WRITS—ORDERS—CHAMBER COURT.

The latter clause of Section 14, Art. 5, provides that "they (circuit courts) and the judges thereof shall also have jurisdiction and power to issue writs of

habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same;" and Section 18 of the same article provides that "writs of error and appeals may be allowed from the decision of the circuit courts to the supreme court under such regulations as may be prescribed by law." It will thus be seen that the legislature could not take from the circuit judges the power to issue injunctions as judges, had it attempted to do so. That power, being conferred upon them by the constitution, cannot be taken away by any legislative action; and, as Section 18 provides only for appeals from decisions of the circuit court, it may be a question whether it is competent for the legislature to provide for appeals from the order of a judge, if it desire to do so. When, then, the state Constitution and the statute have specifically conferred upon the court or judge the power to make an order, and the judge deems it proper to exercise the power vested in him by making the order a chambers order, and not a court order, such an exercise of his discretion cannot be controlled by this court.

B. H. F. & M. Co. v. G. I. & W. C. R. Co., 2 S. D., 546, 51 N. W., 340.

JURISDICTION—MISDEMEANOR—CIRCUIT COURT—ASSAULT.

1. A defendant indicted for an assault with a dangerous weapon with intent to do bodily harm may be found guilty of simple assault, in view of Comp. Laws, § 7429, providing that "the jury may find the defendant guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment."

2. In view of Const. Art. 5, § 14, a circuit court has jurisdiction to try a misdemeanor, which by Comp. Laws, §§ 6509, 7043, may be tried in justices' courts.

State v. Finder, 10 S. D., 103, 72 N. W., 97.

§ 15. The state shall be divided into judicial circuits, in each of which there shall be elected by the electors thereof one judge of the circuit court therein, whose term of office shall be four years.

§ 16. Until otherwise ordered by law, said circuits shall be eight in number and constituted as follows, viz:

COUNTY—UNORGANIZED—ASSESSMENT—ACTION FOR FEES.

By Laws 1893, Chap. 49, Lyman county was attached to Brule county for judicial purposes January 26, 1893. Laws 1891, Chap. 15, as amended by Chap. 16, requires the assessor to assess the property in Lyman county and other unorganized counties for state and judicial purposes, and makes the state liable for the expenses of criminal prosecutions arising in such unorganized counties. Held, in an action against the state for fees earned in criminal cases arising in Lyman county, that the petition must show that the fees were earned after January 26, 1893.

Morgan v. State, 9 S. D., 230, 68 N. W., 538.

CIRCUITS.

NOTE—The present status of the several circuits of the state is fixed by Article 5, Chapter 11, Political Code, and Chapter 114 of the Session Laws of 1903; Chapters 78, 79 and 80, Session Laws of 1905, and Chapters 111, 112, 113, 114 and 115, Session Laws of 1907.

§ 17. The legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and the judges thereof, and divide the state into judicial circuits accordingly, taking care that they be formed of compact territory and be bounded by county lines but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

§ 18. Writs of error and appeals may be allowed from the decisions of the circuit courts to the supreme court under such regulations as may be prescribed by law.

APPEALS—LIMITATIONS OF.

Const. Art. 5, § 18, is permissive only, and does not prohibit the legislature from limiting appeals to a defined class of cases.

McClain v. Williams, 10 S. D., 332, 73 N. W., 72.

COUNTY COURTS.

§ 19. There shall be elected in each organized county a county judge who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

See Hauser v. Seeley, et al., 18 S. D., 308, 100 N. W., 437.

§ 20. County courts shall be courts of record and shall have original jurisdiction in all matters of probate, guardianship, and settlement of estates of deceased persons, and such other civil and criminal jurisdiction as may be conferred by law; *Provided*, that such courts shall not have jurisdiction in any case where the debt, damage, claim or value of property involved shall exceed one thousand dollars, except in matters of probate, guardianship and the estates of deceased persons. Writs of error and appeal may be allowed from county to circuit courts, or to the supreme court in such cases and in such manner as may be prescribed by law; *Provided*, that no appeal or writ of error shall be allowed to the circuit court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities or towns.

COUNTY COURTS—JURISDICTION—LIMIT OF—SPECIAL.

In pursuance of the powers conferred by the Constitution, Art. 5, Sec. 20, 34, the legislature of 1890 adopted a law—being Chapter 78 of the Session Laws of that year—fixing the jurisdiction of the county courts as to their "other civil and criminal jurisdiction" not fixed by the Constitution. By Section 6 of the same chapter, it is provided that they (county courts) shall have concurrent jurisdiction with the circuit courts, the amount thereof being limited, according to the population of the counties, as follows: " * * * and in all other counties, when the debt, damage, claim, or value of the property involved shall not exceed five hundred dollars." These courts are therefore courts of limited and special jurisdiction as to "such other civil and criminal jurisdiction as may be conferred by law." The jurisdiction of such courts being limited to a specified sum, it can only exercise jurisdiction for any purpose when the debt, damage, or claim is within the amount specified.

Nelson v. Ladd, 4 S. D., 1, 54 N. W., 809.

COUNTY COURTS—JURISDICTION—SUBJECT MATTER — PARTIES—WAIVER—ACTION TRANSFERRED—MOTION TO DISMISS.

1. By the provisions of Section 6, Chapter 78, Laws 1890, defining the jurisdiction of county courts and limiting the jurisdiction of the same to "all that class of cases wherein justices of the peace now have, or may hereafter have jurisdiction, the amount thereof being limited according to the population of the counties," the jurisdiction of such county courts is not only limited as to the subject matter of the action over which justices of the peace have jurisdiction, but to the jurisdiction of justices' courts over the parties to the action.

2. Section 6044, Comp. Laws, providing that "actions in justices' courts must be commenced and * * * must be tried in the county where the defendant resides or in which he may be summoned," and Section 6055 providing, "that the summons cannot be served out of the county of the justice before whom the action is brought, except, when the action is brought on a joint contract or obligation of two or more parties," control and limit the jurisdiction of county courts over the parties to the action.

3. A general appearance by the defendant in an action, after a special appearance for the purpose, and motion made to dismiss the same on the ground that the court has no jurisdiction of the person, and which has been overruled and exception legally preserved, does not constitute a waiver of the objection to the jurisdiction of the court.

4. When an action in which the court has not jurisdiction of the person of the defendant, and in which a motion to dismiss on the ground that the court has not jurisdiction of the person of the defendant has been made and overruled, and exception preserved, is transferred to another county court, the latter court acquires no jurisdiction of the same, and it should, on motion, dismiss the action.

Benedict v. Johnson, 4 S. D., 388, 57 N. W., 66.

COUNTY COURTS—POWERS.

In ascertaining the powers of the county court in this state, it will be necessary to consult our own constitution and statutes in the light of recognized principles of law. If power exists to coerce obedience to this order of the county court, it exists by reason of the inherent powers of that court, and not by reason of any express statutory authority. The county court is a court of record created by the constitution. In all probate matters its proceedings are to be construed in the same manner, and with like intendments as the proceedings of courts of general jurisdiction, and to its records, orders, judgments, and decrees must be accorded the same force, effect and legal presumptions that are accorded to the records, orders, judgments, and decrees of circuit courts.

In re Taber, 13 S. D., 67, 82 N. W., 398.

§ 21. The county court shall not have jurisdiction in cases of felony, nor shall criminal cases therein be prosecuted by indictment, but they may have such jurisdiction in criminal matters, not of the grade of felony, as the legislature may prescribe, and the prosecutions therein may be by information or otherwise as the legislature may provide.

COUNTY COURT—JURISDICTION—LIMIT OF BASTARDY.

The provisions of Chapter 24, Laws 1893, conferring jurisdiction in bastardy proceedings upon county courts, are not in conflict with the provisions of section 20, 21, Art. 5.

State v. Scott, 7 S. D., 619, 65 N. W., 31; See also State v. Bunker, 7 S. D., 721, 65 N. W., 33.

JUSTICE OF THE PEACE.

§ 22. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of one hundred dollars, or where the boundaries or title to real property shall be called in question.

POLICE MAGISTRATE.

The following amendment to Section 23 of Article V was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 29,417 for, and 18,755 against.

§ 23. The legislature shall have power to provide for creating such police magistrates for cities and towns as may be deemed from time to time necessary, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns respectively and such police magistrates may also be constituted *ex*-officio justices of the peace for their respective counties. In cities having a population of five thousand or over the legislature may provide, in lieu of police magistrates, for municipal courts the judges whereof shall be chosen in such manner as the legislature shall prescribe, which courts shall have exclusive original jurisdiction of all cases, both civil and criminal, cognizable before a justice of the peace under the laws of the state, and in which process shall be served within the city where such court is established, and shall also have exclusive original jurisdiction of all cases arising under the ordinances of such city. Such court shall also have jurisdiction co-extensive with the county in which such city is situated, in such civil and criminal cases as may be provided by law.

POWERS—EMBEZZLEMENT.

Under Comp. laws § 7119, a police justice may act as a committing magistrate on a prosecution for embezzlement.

State v. Wright, 15 S. D., 628, 91 N. W., 311.

STATES ATTORNEY.

§ 24. The legislature shall have power to provide for state's attorneys and to prescribe their duties, and fix their compensation; but no person shall be eligible to the office of attorney general or state's attorney who shall not at the time of his election be at least twenty-five years of age and possess all the other qualifications for judges of circuit courts as prescribed in this article.

QUALIFICATIONS—CONTESTED ELECTION—CERTIFICATE OF NOMINATION—OMISSION IN—PLEADINGS.

In a contest for the office of state's attorney, under Comp. Laws, §§ 1489, 1891, the omission, in the certificate of nomination, of the words, "learned in the law," required as a qualification for candidates by Const. Art. 5, §§ 24, 25, is obviated by an averment in the answer to the effect that at the time of the election plaintiff was, and still is the legally qualified and acting state's attorney, as every essential fact appearing in the pleadings, in the absence of a demurrer or motion to dismiss, defendant has no cause for complaint.

McMahon v. Polk, 10 S. D., 296, 73 N. W., 77.

SAME.

Under Const. Art. 5, §§ 24, 25, and Comp. Laws 1887, § 427, requiring persons eligible to the office of district attorney to be admitted to practice as an attorney in some court of record in the territory, was without effect since the legislature could not prescribe additional qualifications, or modify those imposed by the Constitution.

Howard v. Burns, et al, 14 S. D., 384, 85 N. W., 920.

MISCELLANEOUS.

§ 25. No person shall be eligible to the office of judge of the circuit or county courts unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States; nor unless he shall have resided in this state or territory at least one year next preceding his election, and at the time of his election be a resident of the county or circuit, as the case may be, for which he is elected.

QUALIFICATIONS.

One elected to the office of county judge, must be either admitted, or entitled to be admitted, without examination, to practice as an attorney at law in this state.

Jamieson v. Wiggin, 12 S. D., 16, 80 N. W., 137.
See dissenting opinion in Church v. Walker, 10 S. D., 96.

§ 26. The judges of the supreme court, circuit courts and county courts shall be chosen at the first election under the provisions of this constitution, and thereafter as provided by law, and the legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding but not in any case more than six months. The term of office of all judges of circuit courts, elected in the several judicial circuits throughout the state, shall expire on the same day.

§ 27. The time of holding courts within said judicial circuits and counties shall be as provided by law; but at least one term of the circuit court shall be held annually in each organized county, and the legislature shall make provision for attaching unorganized counties or territory to organized counties for judicial purposes.

TERM—SPECIAL—NEWLY ORGANIZED COUNTY.

Under Const. Art. 5, § 27, a circuit judge may call a special term of court in a newly organized county where more than one year will intervene before the time fixed by law for holding the first regular term of court.

In re Nelson, 19 S. D., 215, 102 N. W., 885.

§ 28. Special terms of said courts may be held under such regulations as may be provided by law.

TERMS—SPECIAL.

If subsequent legislation was required to give effect to Const. Art. 5, § 28, it became operative by the enactment of laws 1890, p. 254, c. 105, declaring territorial laws not inconsistent with the state Constitution to be in force, which, in effect, re-enacted Comp. Laws 1887, § 426, authorizing circuit judges to appoint and hold special terms of court.

In re Nelson, 19 S. D., 215, 102 N. W., 885.

§ 29. The judges of the circuit courts may hold courts in other circuits than their own, under such regulations as may be prescribed by law.

CIRCUIT JUDGES—POWERS—MANDAMUS—APPEAL.

1. Section 29, Art. 5, does not touch the exercise of any power of a circuit judge other than that of "holding court." It neither enlarges nor abridges any other power of the judge, nor authorizes nor forbids the legislature to do so. It is simply silent as to every other power.

2. There is nothing in the Constitution forbidding the legislature to authorize a circuit judge to make an order in his own circuit in a matter pending in another circuit, whose judge is absent; and chapter 79, Laws 1890, so providing, is not invalid on that account.

3. Within the meaning of said chapter, a petition or motion may properly be considered as pending from the time of its filing in the office of the clerk of the court of the proper jurisdiction, as a foundation for other proceedings immediately to follow.

4. An order of a judge in his own circuit, granting a premptory mandamus in another circuit, is not a decision which may be brought directly to this court for review, because—

5. Both the Constitution and the statutes limit the appellate jurisdiction of this court to a review of the decisions of courts.

Holden v. Haserodt, et al., 3 S. D., 4, 51 N. W., 340.

§ 30. The judges of the supreme court, circuit courts and county courts shall each receive such salary as may be provided by law, consistent with this constitution, and no such judge shall receive any compensation, perquisite or emoluments for or on account of his office in any form whatever, except such salary; *Provided*, that county judges may accept and receive such fees as may be allowed under the land laws of the United States.

§ 31. No judge of the supreme court or circuit court shall act as attorney or counselor at law, nor shall any county judge act as an attorney or counselor at law in any case which is or may be brought into his court or which may be appealed therefrom.

§ 32. There shall be a clerk of the circuit court in each organized county, who shall also be clerk of the county court, and who shall be elected by the qualified electors of such county. The duties and compensation of said clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law.

CIRCUIT COURT—CLERK—VACANCY.

Section 32, Art. 5, of the Constitution, having created the office of clerk of the circuit court, and having provided generally for the election of such officer, with other county officers, at the general election in November, 1890, and the state having been admitted on the 2nd day of November, 1889, there was a vacancy in such office from the time of the admission of the state.

Driscoll v. Jones, 1 S. D., 8, 44 N. W., 726.

§ 33. Until the legislature shall provide by law for fixing the terms of courts, the judges of the supreme, circuit and county courts respectively shall fix the terms thereof.

§ 34. All laws relating to courts shall be general and of uniform operation throughout the state, and the organization, jurisdiction, power, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform; *Provided, however*, that the legislature may

in that it confers upon the board the absolute power to determine who and who shall not sell nursery stock within the state.

Ex parte Hawley, 22 S. D. —— 115 N. W. 93.

§ 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any minister or place of worship against his consent nor shall any preference be given by law to any religious establishment, or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

APPROPRIATIONS FOR SECTARIAN SCHOOLS—PAYMENT OF STUDENTS' TUITION—VALIDITY OF CONTRACT.

Construing Art. 6, sec. 3, and Art. 8, sec. 16 it is held that these provisions of the Constitution were intended to be and are self-executing, and require no act of the legislature to become operative, but of themselves control all legislation upon the subject of appropriating money or other property for "the benefit of" or "to aid" any sectarian school, society, or institution, and control and limit the powers of all state, county, and municipal officers in auditing or paying any such appropriation.

Synod of Dakota v. State, 2 S. D., 366, 50 N. W., 632.

§ 4. The right of petition, and of the people peaceably to assemble to consult for the common good and make known their opinions, shall never be abridged.

§ 5. Every person may freely speak, write and publish, on all subjects, being responsible for the abuse of that right. In all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

SLANDER—PRIVILEGED COMMUNICATION—CHARGE TO JURY—ERROR.

Where, in an action for slander, the plea was that the statement was privileged, it was error for the court to assume to decide that the communication was not privileged; its duty being merely to direct the jury by stating to them what constitutes a privileged communication.

Ross v. Ward, 14 S. D., 240, 85 N. W., 182.

LIBEL—EVIDENCE—RECORDS, ABSENCE OF.

In an action for libel, that where the evidence, including the alleged libel, was absent from the record, an instruction submitting to the jury the question whether the publication charged plaintiff with being prosecuted criminally, for embezzlement would be presumed proper, if it would be proper under any provable state of facts under the pleadings.

Myers v. Longstaff, 14 S. D., 98, 84 N. W., 234; See also Boucher v. Clark Publishing Co., 14 S. D., 72, 84 N. W. 237.

§ 6. The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but the legislature may provide for a jury of less than twelve in any court not a court of record and for the decision of civil cases by three fourths of the jury in any court.

JURY TRIAL—STATUTES VIOLATING.

The charter of the city of Watertown (sections 25, 27), authorizing a police justice to try certain cases for violation of ordinance without a jury, and allowing an appeal in such cases only when imprisonment exceeding 10 days or a fine exceeding $20 is imposed, violates Const. Art. 6, § 6, and section 7.

Belatti v. Pierce, Police Justice, 8 S. D., 456, 66 N. W., 1088.

JURY TRIAL—PROBATE PROCEEDINGS.

Under Const. Art. 6, § 6, parties who petition for letters of administration had no constitutional right to a jury trial.

In re McCullan's Estate, 20 S. D., 498, 107 N. W., 681.

TRIAL—NON-WAIVER.

Under the provision of Art. 6, § 6, Rev. Code Civ. Proc. § 275, providing that in an action for the recovery of specified real or personal property trial by jury may be waived only with the assent of the court to the written consent of the parties filed with the clerk, or an oral stipulation made in open court and recorded in the minutes of the trial, the right to a trial by jury is not waived by defendant in an action at law for the recovery of personal property by moving for a directed verdict at the conclusion of plaintiff's evidence, where, after the denial of the motion, he introduces evidence sufficient to carry his case to the jury.

Albien v. Smith, 19 S. D., 421, 103 N. W., 655.

§ 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

CONTEMPT—WITNESSES—STATUTORY PROVISIONS.

1. Neither the constitutional provision that "the right of trial by jury shall remain inviolate," nor that the accused shall be entitled "to meet the witnesses against him face to face," has application to summary proceedings to punish for contempt.

2. That portion of section 13, c. 101, Laws 1890, which provides that "the affidavits upon which the attachment of contempt issues shall make a prima facie case for the state," is not unconstitutional, as being an encroachment of the legislative upon the judicial power.

3. Whether the law is unconstitutional, in that under it a defendant may be compelled to be a witness against himself, is not decided, for it is not claimed that defendant's rights were so violated, and it is a well-established rule of law that no one can take advantage of the unconstitutionality of any provision of a law who has no interest in, and is not affected by, such provision.

State v. Mitchell, 3 S. D., 223, 52 N. W., 1052.

INDICTMENT—SUFFICIENCY OF—INTOXICANTS.

Under Section 7, Art. 6, the offense charged in an indictment must be set forth with sufficient certainty to enable the accused to prepare his defense in advance of the trial, to enable the trial court to know that the accused is being tried upon the identical charge passed upon by the grand jury, and to enable the accused to plead his conviction or acquittal in bar of a second indictment.

2. An indictment which charges the offense as follows: "That F. B., late of said county, yeoman, on the 1st day of March, in the year of our Lord one thousand eight hundred and ninety-three, at the county of Beadle and State of South Dakota, with a force of arms then and there did willfully, wrongfully, and unlawfully sell intoxicating liquors, to be drank as a beverage, contrary to the statute in such case made and provided, and against the peace and dignity of the State of South Dakota."—is insufficient, in that it does not set out the nature and cause of the accusation with that degree of certainty required by Section 7, Art. 6, of the state Constitution.

State v. Burchard, 4 S. D., 448, 57 N. W., 491.

TRIAL—DELAY—DISCHARGE.

Const. Art. 6, § 7, entitles an accused to a speedy trial. Rev. Code Cr. Proc. § 630, declares that, if a defendant prosecuted for a public offense,

whose trial has not been postponed on his application, is not brought to trial at the next term of court in which the indictment or information is triable, the court must order the prosecution dismissed, unless no cause is shown to the contrary; and section 395 provides that, where the jury disagree, the cause may be again tried at the same or another term, as the court may direct. Held, that where accused was on bail, and after one disagreement applied for a change of judge, but took no steps to prevent the adjournment of his case for several terms, nor to procure an earlier retrial, he was not entitled to a discharge for delay.

State v. Lamphere, 20 S. D., 98, 104 N. W., 1038.

WITNESSES—NOTICE OF.

Sec. 7, does not require that notice be given to accused previous to the trial, of all witnesses who may be called by the state.

State v. Matejousky, 22 S. D. —— 115 N. W. 96.

TRIAL—EVIDENCE—ERROR.

Rev. Code Cr. Proc. sec. 7, sub. div. 3, gives the accused the right to be confronted by the witnesses against him in the presence of the court; it was error to read from the stenographer's transcript the testimony on preliminary examination of the witness for the state who were then absent from the state.

State v. Heffernan et al., 22. S. D. —— 118 N. W., 1027.

APPEAL—RECORDS—COMPLAINT.

1. A defendant is entitled, on appeal from a conviction before a justice on questions of both law and fact, to have all papers filed in the cause transmitted to the circuit court (Comp. Laws § 6182), and to the benefit of all legal questions raised on the pleadings in the justice court.

2. The sworn complaint required in all prosecutions before a justice (Comp. Laws, § 6147) is jurisdictional in all stages of the prosecution, and a defendant cannot be tried in the circuit court on an appeal on questions of both law and fact, unless such complaint has been certified up by the justice.

3. To hold that a court, in any stage of a criminal prosecution, may try and convict a defendant, without a semblance of such an accusation as the law expressly requires, would establish a precedent, unsanctioned by the statute, and at variance with his right, "to demand the nature and cause of the accusation against him, to have a copy thereof," as guaranteed by Section 7 of Article 6 of the Constitution of this state.

State v. Walker, 9 S. D., 438, 69 N. W., 586.

WITNESSES—PROCESS TO SECURE.

One is entitled as a matter of right to the presence of his witnesses or every advantage of their presence, if their presence be procurable, and this necessarily includes adequate means to secure their presence or the advantages which would flow therefrom. Hence he is entitled, under reasonable regulations, to process for witnesses anywhere within the state, and to a reasonable opportunity to invoke the use of such process.

State v. Wilcox, 22 S. D. —— 115 N. W., 687.

INDICTMENT, CONTAINS WHAT.

It is "the acts constituting the offense," not the conclusion of the pleader as to what crime such acts constitute, which is required. Facts are demanded, not conclusions of law, or obsolete technical phrases. The principal office of the indictment is to inform the accused of the "nature and cause of the accusation against him," to be thus informed being one of his most important constitutional rights. How can the required object be better attained than by stating the acts constituting the alleged offense "in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended."

State ex rel. Kotilinic v. Swenson, 18 S. D., 202, 99 N. W., 1114.

TRIAL—REMOVAL OF ACTION.

Comp. Laws, §§ 7312-7318, providing for the removal of a criminal action prosecuted by indictment, on the application of the state's attorney, from the court in which it is pending, if the offense charged be punishable with death or imprisonment in the penitentiary, where it appears that a fair and impartial trial cannot be had in such county or subdivision, violated Const. Art. 6, § 7.

In re Nelson, 19 S. D., 215, 102 N. W., 885.

INDICTMENT—JOINT CHARGE—CONVICTION.

Under an indictment charging an illegal sale of intoxicating liquor to several persons jointly, defendant cannot be convicted of an illegal sale to but one of the persons named.

State v. Williams, 20 S. D., 492, 107 N. W., 830.

§ 8. All persons shall be bailable by sufficient sureties, except for capital offenses when proof is evident or presumption great. The privilege of the writ of *habeas corpus* shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

BAIL—CAPITAL OFFENSES—EVIDENT PROOF AS GREAT PRESUMTION —BURDEN OF PROOF.

1. Under Const. Art. 6, § 8, persons arrested for capital offenses, where the proof is not evident or the presumption great, are entitled to bail as a matter of right, and Rev. Code Cr. Proc. §§ 585, 586, providing that bail may be admitted upon all arrests for criminal offenses punishable by death unless the proof is evident or the presumption great, but shall be taken only by the Supreme Court or circuit court or a justice or judge thereof "who shall exercise their discretion therein," is in conflict with the constitutional provision.

2. Under Const. Art. 6, § 8, and Rev. Code Cr. Proc. § 585, 586, containing substantially the same provisions, and section 356, providing that defendant in a criminal case is presumed to be innocent, the burden is on the state in an application for bail, to show that the proof is evident or the presumption great.

State v. Kauffman, 20 S. D., 620; 108 N. W., 246.

§ 9. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense.

EVIDENCE—ADMISSIONS.

The admission of a letter written by accused while in jail, to his father and mother, and delivered unsealed to the sheriff for mailing, containing an implied admission of his participation in the crime with which he was charged, was not objectionable as violating Const. Art. 6, § 9.

State v. Vay, 21 S. D., 612, 114 N. W., 719.

CONVICTION, REVERSAL OF JUDGMENT—ERROR.

When a defendant in a criminal action is convicted of the crime charged, and subsequently, on writ of error sued out by himself, procured in this court a reversal of the judgment of conviction, for errors in the charge of the trial court to the jury, he is not entitled to be discharged on the ground that he has once been put in jeopardy.

State v. Reddington, 8 S. D., 315; 66 N. W., 465.

RAPE—FORMER JEOPARDY.

Defendant was convicted of rape on a female under the age of 16 years, and application for a new trial was denied; but inasmuch as the evidence showed that the female was more than 16 years old at the time when the offense was alleged to have been committed, the court on its own motion arrested the judgment, and ordered defendant to be held in custody for 10 days, during which period a second information was filed against him, charging the same offense,

with the exception that the date of the commission of the offense was earlier. Held, that a plea of former jeopardy should be sustained.

State v. Adams, 11 S. D., 431, 78 N. W., 353; See also State v. Caddy, 5, S. D. 167.

§ 10. No person shall be held for a criminal offense unless on the presentment or indictment of the grand jury, or information of the public prosecutor, except in cases of impeachment, in cases cognizable by county courts, by justices of the peace, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger. *Provided*, that the grand jury may be modified or abolished by law.

STATUTES—SEDUCTION—EVIDENCE—PROMISE OF MARRIAGE.

1. Laws 1895, Chap. 64, authorizing the several courts of the state "to hear, try and determine prosecutions upon information, for crimes, misdemeanors and offenses" theretofore triable on indictment only, embraces but a single subject, and is not in violation of Const., Art. 3, Sec. 21, Chap. 64, Laws 1895 is within Const. Art. 6, Sec. 10.

3. On trial for seduction it appeared that defendant first met the prosecuting witness late in the year 1894; that he frequently escorted her to places of public worship and social entertainments, and informed her that he was keeping company with no other young lady; that they had associated thus to the last of February, 1895, when accused temporarily left the state; that during his absence for five months the prosecuting witness had no other male attendant; and that upon his return to the state accused renewed his attentions, and soon afterwards accomplished her ruin. Held, that the corroborating evidence was sufficient to sustain the verdict that the offense was accomplished under a promise of marriage.

State v. Ayres, 8 S. D., 516, 67 N. W., 611.

§ 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

§ 12. No *ex post facto* law, or law impairing the obligation of contracts or making any irrevocable grant or privilege, franchise or immunity, shall be passed.

STATUTES—INSURANCE—CONTRACT.

1. Laws 1895, Chap. 89, declaring that the avails of any policy of insurance, "heretofore or hereafter issued upon the life of any person," payable to the estate of the insured, etc., "shall, if the insured at the time of death reside or resided in this state, and leave or left a surviving widow or minor child," to an amount not exceeding $5,000, inure to the separate use of the widow or husband or minor children, independently of the creditors of deceased, conflicts with Const. U. S. Art. 1, Sec. 10, providing that no state shall pass any law impairing the obligation of contracts, and also with Const. Art. 6, Sec. 12, containing, in substance and effect, the same provision.

2. The act of 1895, in so far as it relates to antecedent transactions, being retroactive is inoperative and void.

Skinner v. Holt, et al., 9 S. D., 427, 69 N. W. 595.

TAXATION—ASSESSMENT.

The Laws of 1899, p. 44, c. 41, which provide that, the total county tax rate shall not exceed eight mills on the dollar for all purposes violates Art. 6, sec 12.

Fremont, E. & M. V. R. Co. v. Pennington County et al., 20 S. D., 270, 116 N. W. 75.

§ 13. Private property shall not be taken for public use, or damaged, without just compensation as determined by a jury, which shall be paid as soon as it can be ascertained, and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or dam-

aged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

ROADS — TOWNSHIP ASSESSMENT — MUNICIPAL CORPORATIONS — OTHER CORPORATIONS.

1. The provisions of Section 1302, Comp. Laws, imposing upon township supervisors the duty of assessing the damages sustained by the owner of land by reason of the laying out, altering, or discontinuing any road,—the right to an appeal and a jury trial being given to the party who feels aggrieved by any such determination or award of damages made by the supervisors (section 1324, Comp. Laws),—are not in conflict with the provisions of Sec. 13, Art. 6.

2. The purpose of the provisions of the constitution evidently is to secure to a party whose property is taken or damaged for public use, the right to a jury trial upon the question of damages and that right is secured by giving to the party whose land is so taken or damaged the right to an appeal to the court in which such a jury trial may be had.

3. The term "municipal corporation," as used in chapter 94, Laws 1891, does not include townships organized under the laws of this state.

4. The term "other corporations" does not include townships organized under the laws of this state.

5. Chapter 94, Laws 1891, was designed to effect "municipal" and "other corporations" referred to in section 18, Art. 17 of the Constitution only, and has no application to quasi corporations organized under the laws of this state for political and governmental purposes.

Town of Dell Rapids v. Irving, 7 S. D., 310, 65 N. W., 149.

EMINENT DOMAIN—INJUNCTION—ALLEGATIONS—DAMAGES.

Under Const. Art. 6, Sec. 13, a complaint alleging that plaintiff, as owner of certain lots, had erected a house and made improvements on the natural grade of the street, and that defendant city threatened to change the grade thereby damaging her property, and that defendant had not compensated nor offered to compensate her therefor, is sufficient to support an injunction.

Under Const. Art. 6, 13, it was not necessary for plaintiff to allege that she would sustain irreparable injury, or that defendant was unable to respond in damages in order to entitle her to an injunction.

5. The provisions of Const. Art. 6, § 13, are not controlled by Laws 1890, Chap. 37, Art. 16, § 18, providing that, after the grade of any street has been established, the city shall, if they change the grade, be liable in damages, so as to defeat plaintiff's right to damages, where she had built upon and improved her lot at natural grade, and the city threatened to establish a new grade.

6. The fact that the city did not admit that its threatened acts would cause any damage to plaintiff did not relieve it of the obligation to take proper proceedings to ascertain the damages before commencing the proposed improvement, as required by Const. Art. 6, § 13, and Laws 1891, Chap. 94 in execution thereof.

Searle v. City of Lead, 10 S. D., 312, 73, N. W., 101.

ULTRA VIRES—EMINENT DOMAIN—EASEMENT.

Upon the theory that the act of purchasing this land for the purposes of a public highway, and the entering into a contract, as part consideration therefor, to build and maintain a fence along its limits, is ultra vires, the defendant interposed a general demurrer, which was overruled, and the point is here presented for review. In this state, and in fact generally, the public is authorized to acquire for the purposes of a road no more than an easement, while the owner of the fee remains the owner of the land, subject to such incumbrance. Const., Art. 6, § 13; Comp. Laws, § 2783.

Meek v. Meade County, 12 S. D., 165, 80 N. W., 182.

DAMAGES—GRADE—MUNICIPAL LIABILITY.

Const. Art. 6, § 13, declares that private property shall not be taken for public use without just compensation; and Laws 1890, Chap. 37, Art. 16, § 18, provides that after a street grade shall have been established, the city shall be liable for damages occasioned by the change of such grade. Held that, where a street grade had not been established by a legal ordinance, the city was liable for damages sustained by a change of the grade of such street.

Whittaker v. City of Deadwood et al., 12 S. D., 608, 82 N. W., 202.

COMPENSATION.

Section 13, Art. 6, Const. It will be noticed that under this provision "just compensation" must be made to the party whose property is taken or damaged. It is not sufficient that compensation be made for the property taken, but "just compensation" must also be made for other parts of the property damaged. In whatever manner, therefore, the part remaining shall be damaged by the taking, for such damage the party must be fully compensated. The question therefore in such case is, what amount of money will compensate the party for the loss sustained by reason of the opening of the highway.

Schuler et al. v. Board of Supervisors, 12 S. D., 466, 81 N. W., 890.

STREETS—USE—COMPENSATION.

Const. Art. 6, § 13, providing that private property shall not be taken or damaged for public use without just compensation, and that the fee of land taken for highways, shall remain in the owner, and Article 17, § 18, providing that compensation shall be made before property is taken or injured, do not apply to the use of the streets of a city for the purposes for which they have been dedicated.

Kirby v. Citizens' Tel. Co., of Sioux Falls, 17 S. D., 362, 97 N. W., 3.

§ 14. No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment or descent of property.

§ 15. No person shall be imprisoned for debt arising out of or founded upon a contract.

FINE—IMPRISONMENT.

A fine imposed in a civil case may be inforced by imprisonment; Art. 6, Sec. 15, merely prohibiting imprisonment for, "debts arising out of or founded upon a contract."

City of Deadwood v. Allen, 9 S. D., 221, 68 N. W., 333.

§ 16. The military shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

§ 17. No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.

TAXATION—OCCUPATIONS—EXEMPTIONS.

Const. Art. 6, § 17, means with reference to taxes on occupations, that the taxes imposed shall fall alike on all persons who are in substantially the same situation; and therefore the Legislature may classify occupations for the purpose of taxation, and tax some and exempt others.

In re Watson, 17 S. D., 486, 97 N. W., 463.

LICENSE—TAXATION—CLASSIFICATION.

Laws 1903, p. 249, c. 190, imposing a license on peddlers dealing in goods, wares or merchandise "except nursery stock, agricultural products, including milk, butter, eggs, and cheese," and providing that the act shall not apply to traveling salesmen doing business with retailers or with public officers, if construed as imposing a tax on occupations under the taxing power, imposes a tax on all persons embraced within a class, based on a classification conforming to natural and well recognized lines of distinction, and is therefore not in conflict with Article 6, § 17.

In re Watson, 17 S. D., 486, 97 N. W., 463.

§ 18. No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

BANKING.

The banking act of this state (chap. 27, laws 1891), providing for the incorporation of banking associations, in so far as the same prohibits any individual or firm from transacting the banking business specified in subdivision 7 of section 4 of said act, without first complying with the provisions of the act, is in conflict with the provisions of section 18, Art. 6.

State v. Scougal, 3 S. D., 55, 51 N. W. 858.

POLICE POWER.

The statute (Laws 1903 p. 249, c. 190) if considered as an exercise of the police power of the state, is not in conflict with Art. 6, Sec. 18.

In re Watson, 17 S. D., 486, 97 N. W., 463.

PRIMARY ELECTIONS—CLASS LEGISLATION—CANDIDATES.

1. This section requires that every prescribed rule shall have substantially the same operation as to all persons or corporations in substantially the same situation.

2. The primary election law of 1907 p. 306, c. 139, Sec. 6, is unconstitutional as class legislation in that it deprives a political party casting less than 100 votes in a county for its candidate for governor at the preceding election, from representation in the party convention, and each party in calling its state convention is at liberty to determine the total number of its delegates, apportioning them among the several counties with reference to vote for candidate for governor at the last preceding general election.

Morrow v. Wipf, 22 S. D., —— 115 N. W., 1122.

§ 19. Elections shall be free and equal, and no power, civil or military shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty in or out of the state under regulations to be prescribed by the legislature.

ELECTIONS—CANDIDATES—CERTIFICATION OF NAMES—BALLOT—PLEADINGS—DEMURRER.

1. Const. Art. 6, § 19, provides that elections shall be free and equal, and no power, civil or military, shall at any time interefere to prevent the free exercise of the right of suffrage. Article 7, § 1, provides what shall constitute the qualifications of an elector, and declares that one possessing these qualifications shall be deemed a qualified elector at such election; held that the legislature was not inhibited by the constitution from passing an election law requiring the names of all candidates to be certified by law, and printed on an official ballot, thus, in effect, denying to eelctors the right of writing on the official ballot the name of a candidate whose name has not been properly certified.

2. Where in an action for damages against the board of county commissioners for refusing to canvass a vote, by reason whereof plaintiff was deprived of an office to which he claimed to have been elected, plaintiff failed to show that he was legally elected, a demurrer to the complaint was properly sustained.

Chamberlain v. Wood, et al., 15 S. D., 216, 88 N. W., 109.

§ 20. All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay.

TRIAL—APPEALS.

Const. Art. 6, § 20, is satisfied by a trial in a court of competent jurisdiction, in which the right to jury trial, in proper cases, is afforded, as provided in Section 6, and does not prohibit the legislature from prescribing in what cases appeal may be taken to the supreme court.

McClain v. Williams, 10 S. D., 332, 73 N. W. 72.

§ 21. No power of suspending laws shall be exercised unless by the legislature or its authority.

§ 22. No person shall be attained of treason or felony by the legislature.

§ 23. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

FINES—NUISANCE.

The punishment imposed by section 13, c. 101, Laws 1890, for the first offense of keeping and maintaining a common nuisance is not a "cruel punishment," within the meaning of Section 23, Art. 6, of the Constitution, and such provision is not unconstitutional on that account.

State v. Becker, 3 S. D., 29, 51 N. W., 1019.

§ 24. The right of citizenship to bear arms in defense of themselves and the state shall not be denied.

§ 25. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

§ 26. All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the State of South Dakota is an inseperable part of the American Union, and the constitution of the United States is the supreme law of the land.'

§ 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence to fundamental principles.

ARTICLE VII.

ELECTIONS AND RIGHT OF SUFFRAGE

§ 1. Every male person resident of this state who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to either of the following classes, who shall be a qualified elector under the laws of the territory of Dakota at the date of the ratification of this constitution by the people, or who shall have resided in the United States one year, in the state six months, in the county thirty days, and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election;

First, citizens of the United States.

Second, persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States upon the subject of naturalization.

ELECTIONS—PRIMARY—METHOD OF NOMINATION.

The primary election, Laws 1907, p. 286, c. 139, § 3, declares that thereafter all party candidates for the elective offices named, and for the office of United States senator, shall be nominated, and all party delegates to political conventions, and all precinct, county, state, and national committeemen shall be nominated and elected at a primary election held in accordance with the provisions of the act; that all other nominations of such candidates shall be by petition in the manner provided by law. Section 6, subd. 1, provides that the name of no candidate for United States senator, nor of any candidate for member of congress, nor for any state office, including judges of the circuit court, shall be printed on any official ballot used at a primary election, unless the nominating petition in the form prescribed shall have been filed in the office of the Secretary of State. Held, that such act prescribed the exclusive mode of nominating party candidates for the offices specified therein.

The primary election, (Laws 1907, p. 285, c. 139) though construed as prescribing an exclusive mode of nominating candidates for offices mentioned therein, is not unconstitutional as an improper infringement on an elective

franchise, such franchise being a mere privilege, and not a natural right, which the Legislature may regulate to any extent not prohibited by the federal and state Constitutions.

Healy et al. v. Wipf, Secretary of State, 22 S. D. ——, 117 N. W., 521; See also under Art. 6, Sec. 19; Chamberlain v. Wood, 15 S. D. 216, 88 N. W., 109.

§ 2. The legislature shall at its first session after the admission of the state into the union submit to a vote of the electors of the state the following question to be voted upon at the next general election held thereafter, namely: "Shall the word 'male' be stricken from the article of the constitution relating to elections and the right of suffrage?" If a majority of the votes cast upon that question are in favor of striking out said word "male," it shall be stricken out and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this state.

Note—The above question was submitted to the people at the election held in November, 1890, and was rejected by the following vote: For, 22,072; against, 45,682.

§ 3. All votes shall be by ballot, but the legislature may provide for numbering ballots for the purpose of preventing and detecting fraud.

§ 4. All general elections shall be biennial.

§ 5. Electors shall in all cases except treason, felony or breach of the peace be privileged from arrest during their attendance at elections and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of elections, except in the time of war or public danger.

§ 6. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

§ 7. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed therein.

§ 8. No person under guardianship, *non compos mentis* or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

§ 9. Any woman having the qualifications enumerated in Section 1 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote at any election held solely for school purposes and may hold any office in this state, except as otherwise provided in this constitution.

ARTICLE VIII.

EDUCATION AND SCHOOL LANDS.

§ 1. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

§ 2. All proceeds of the sale of public lands that have heretofore been or may hereafter be given by the United States for the use of public schools in the state; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the state by escheat; the proceeds of all gifts or donations to the state for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the state. It shall be deemed a trust fund held by the state. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the state shall make good all losses thereof which may in any manner occur.

STATE BONDS—LIMITATIONS—SCHOOL FUND.

1. Act March 12, 1895, directing the issue and sale of state bonds to make good losses to the permanent school fund and to the interest and income funds,

caused by the defalcation of the late state treasurer, is not repugnant to Const. Art. 13.

2. Const. art. 8, §§ 2, 13, provide that the state shall make good all losses to the perpetual school fund; and that losses caused by the defalcation or mismanagement of the officer controlling the fund shall be a permanent funded debt against the state, which shall not be counted as a part of the indebtedness to which the state is limited by Const. Art. 13, § 2.

3. Article 8, § 3, declares that no part of the fund, "either principal or interest," shall be diverted from its purpose. Held, that the state must make good all losses to the interest and income funds as well as to the permanent fund, and for this purpose the legislature may authorize the issue of bonds.

Healy et al. v. Wipf, Secretary of State, 22 S. D. ——, 117 N. W., 521; See also 7 S. D., 42, 63 N. W. 223. See also State v. Ruth, 9. S. D., 90, 68 N. W., 189.

§ 3. The interest and income of this fund, together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the state, and shall be for this purpose apportioned among and between all the several public school corporations of the state in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of public schools for the equal benefit of all the people of the state.

§ 4. After one year from the assembling of the first legislature, the lands granted to the state by the United States for the use of public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the state, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

The commissioner of school and public lands, the state auditor and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all school lands within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale.

They shall take care to first select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest price may be obtained therefor.

§ 5. No land shall be sold for less than the appraised value, and in no case for less than ten dollars an acre. The purchaser shall pay one-fourth of the price in cash and the remaining three-fourths as follows: one-fourth in five years, one-fourth in ten years and one-fourth in fifteen years, with interest thereon at the rate of not less than six per centum per annum, payable annually in advance; but all such subdivided lands may be sold for cash, provided that upon payment of the interest for one full year in advance, the balance of the purchase price may be paid at any time. All sales shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of not more than eighty acres and those so subdivided in the smallest subdivision. All lands designated for sale and not sold within four years after appraisal, shall be re-appraised by the board of appraisal as hereinbefore provided before they are sold.

SCHOOL LANDS—CONTRACT OF SALE—DEFAULT—EXECUTION.

The Laws of 1890, p. 296, c. 136, provide for sales in pursuance of the constitutional provisions, also for the issuance of "contracts of sale." They declare

that whenever the purchaser of any tract default in the principal or interest or shall violate any provisions of the contract of sale, such sale may be set aside. Held, that one having made a first payment and having received a contract of sale from the commissioners, had an interest in the lands which was subject to execution under Rev. Code Civ. Pro., Sec. 336.

Brooke v. Eastman, Commissioner, 17 S. D., 339, 96 N. W. 699.

§ 6. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law, and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law. No grant or patent for any such lands shall issue until final payment be made.

§ 7. All lands, money or other property donated, granted or received from the United States or any other source for a university, agricultural college, normal schools or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses therefrom that shall in any manner occur.

FUNDS—APPORTIONMENT—WARRANTS.

Laws 1890, Chap. 137, providing for the annual apportionment among the several educational institutions of the income of their lands (which lands, Const. Art. 8, § 7, provides, shall remain a perpetual fund, the income to be applied to the institutions to which they were granted) and providing for the issuance of warrants for the amounts so apportioned, was not impliedly repealed by Laws 1895, Chap. 97, forbidding the creation of unauthorized indebtedness against the state, and providing that no warrant shall issue without an appropriation first made by the legislature in exact amount for the specific purpose.

Heston v. Mayhew, State Auditor, 9 S. D., 501. 70 N. W. 635.

§ 8. All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same officers and boards under the same limitations and subject to all the conditions as to price, sale and approval, provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

See State v. Ruth. 9 S. D., 91. 68 N. W. 189.

§ 9. The lands mentioned in this Article shall be leased for pasturage, meadow, farming, the growing of crops of grain and general agricultural purposes, and at public auction, after notice as hereinbefore provided in case of sale and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor.

This section was amended at the general election, November 8, 1910, by a vote of 48,152 yes, 44,220 no.

§ 10. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall ever be recognized; nor shall compensation ever be made on account of any improvements made by such trespasser.

The following amendment in Section 11, of Article 8, was submitted at the general election held November 8, 1904, and was adopted by a vote of 38,681 to 21,424.

§ 11. The moneys of the permanent school and other educational funds shall be invested only in first mortgages upon good improved farm lands within this state as hereinafter provided, or in bonds of school corporations within the state, or in bonds of the United States, or of the state of South Dakota, or of any organized county, township or incorporated city in said state. The legislature shall provide by law the method of determining the amounts of said funds which shall be invested from time to time in such classes of securities respectively, taking care to secure continuous investments as far as possible.

All moneys of said funds which may from time to time be designated for investment in farm mortgages and in the bonds of school corporations, or in bonds of organized counties, townships or incorporated cities within this state, shall for such purpose be divided among the organized counties of the state in proportion to population as nearly as provisions by law to secure continuous investment may permit. The several counties shall hold and manage the same as trust funds, and they shall be and remain responsible and accountable for the principal and interest of all such moneys received by them from the date of receipt until returned because not loaned; and in case of loss of any money so apportioned to any county, such county shall make the same good out of its common revenue. Counties shall invest said money in bonds of school corporations, counties, townships or cities, or in first mortgages upon good improved farm lands within their limits respectively. The amount of each loan shall not exceed one-third the actual value of the lands covered by the mortgage given to secure the same, such value to be determined by the board of county commissioners of the county in which the land is situated, and in no case shall more than five thousand ($5,000) dollars be loaned to any one person, firm or corporation, and the rate of interest shall not be less than five per centum per annum, and shall be such other and higher rate as the legislature may provide, and shall be payable semi-annually on the first day of January and July; *Provided*, that wherever there are moneys of said fund in any county amounting to one thousand dollars that cannot be loaned according to the provisions of this section and any law pursuant thereto, the said sum may be returned to the state treasurer to be intrusted to some other county or counties, or otherwise invested under the provisions of this section.

Each county shall semi-annually, on the first day of January and July render an account of the condition of the funds intrusted to it to the auditor of state and at the same time pay to or account to the state treasurer for the interest due on all funds intrusted to it.

The legislature may provide by general law that counties may retain from interest collected in excess of five per centum upon all said funds intrusted to them, not to exceed one per centum per annum. But no county shall be exempted from the obligation to make semi-annual payments to the state treasury of interest at the rate provided by law for such loans, except only said one per centum; and in no case shall the interest so to be paid be less than five per centum per annum.

The legislature shall provide by law for the safe investment of the permanent school and other educational funds, and for the prompt collection of interest and income thereof, and to carry out the objects and provisions of this section.

The following amendment in section 11, of article 8, was submitted at the general election held November 4, 1902, and was adopted by a vote of 46,472 for, to 9,001 against.

The rate of interest upon all investments of the permanent school or other educational funds mentioned in Section 11 of Article VIII, of the constitution of this state is hereby changed and reduced from six per centum per annum to five per centum per annum, wherever the said words "six per centum per annum" occur in said section. That if the foregoing amendment shall be approved and ratified by the people at said election, as provided by article XXIII of the constitution, said Section 11 of Article VIII of the constitution shall be thereby amended by striking out the said words six per centum per annum wherever they

occur in said section 11 and substituting in lieu thereof the words five per centum per annum."

§ 12. The governor may disapprove any sale, lease or investment other than such as are intrusted to the counties.

§ 13. All losses to the permanent school or other educational funds of this state which shall have been occasioned by the defalcation, negligence, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the fund sustaining the loss upon which not less than six per centum of the annual interest shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in Article XIII., Section 2.

§ 14. The legislature shall provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them from the school fund.

§ 15. The legislature shall make such provision by general taxation, and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.

§ 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

See Synod of Dakota v. State, 2 S. D. 366, 50 N. W. 632.

§ 17. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, under such penalties as shall be provided by law.

ARTICLE IX.

COUNTY AND TOWNSHIP ORGANIZATION.

§ 1. The legislature shall provide by general law for organizing new counties, locating the county seats thereof and changing county lines; but no new counties shall be organized so as to include an area of less than twenty-four congressional townships, as near as may be without dividing a township or fractional township, nor shall the boundaries of any organized county be changed so as to reduce the same to a less area than above specified. All changes in county boundaries in counties already organized, before taking effect, shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter and be adopted by a majority of the votes cast in each county at such election. Counties now organized shall remain as they are unless changed according to the above provisions.

COUNTY ORGANIZATION—CHANGE OF BOUNDARY LINES—SPECIAL ACTS.

Const. Art. 9, § 1, though mandatory, prescribes no penalty for failure to perform such duty, and hence such section does not render invalid a special act providing for the change of boundaries of a specified county.

Stuart et al. v. Kirley, 12 S. D., 246, 81 N. W., 147.

COUNTY BOUNDARIES—SUBMISSION TO VOTE—NOTICE OF.

Laws 1897, c. 41, § 1, provides that the question of changing and defining the boundaries of Stanley county shall be submitted to the voters of such county, and Section 2 requires the board of county commissioners to give notice of such submission. Held, that the constitutional provisions as to elections applied to organized counties only, and electors of unorganized counties proposed to be included in Stanley county were not entitled to vote on such question.

Stuart et al. v. Kirley et al, 12 S. D., 245, 81 N. W., 147.

COUNTY SEAT—TEMPORARY—MAJORITY VOTE.

Under Rev. Pol. Code Sections 750-774 relating to organization of counties and providing for a temporary location of county seat until the next general election thereafter, the selection of such county seat is temporary, and the selection is not made by a majority vote within the Constitution; the county board must submit the question at a general election.

State ex rel. Simmons v. Nyquist et al. 22 S. D. 116 N. W. 754.

§ 2. In counties already organized where the county seat has not been located by a majority vote, it shall be the duty of the county board to submit the location of the county seat to the electors of said county at a general election. The place receiving a majority of all votes cast at said election shall be the county seat of said county.

COUNTY ORGANIZED—SEAT—MAJORITY VOTE—MANDAMUS—STATUTES.

1. A citizen of the United States who is a resident free holder, tax-payer and elector of the county has such interest in the matter as entitles him, as relator, to apply for a writ of mandamus to compel such board to perform the duty prescribed by Section 2.

2. Laws 1890 Chap. 64, Sec. 1, in so far as it requires the presentment of a petition to the board of county commissioners in cases where the county seats have not been located by a majority vote, in order to entitle or require such board to act, is in conflict with Sec. 2.

State ex. rel. Adkins v. Lien et al. 9 S. D., 297. 68 N. W. 748.

MAJORITY VOTE—RESUBMISSION.

In counties in which the county seat has not been located by a majority vote, the county board shall submit the location thereof at a general election, and "the place receiving a majority of all votes cast at said election shall be the county seat," a majority of the votes cast on such question was insufficient to effect a change of location when it was less than a majority of all the votes at such general election.

Adkins v. Lien et al., County commissioners, 10 S. D. 436. 73 N. W. 959.

Laws 1890, Chap. 64, declares that, if no place shall receive a majority of votes, the question of the location of the county seat shall not be resubmitted before the expiration of four years. Held, that such provision was not in conflict with the Constitution, and hence, where an organized county failed to select a place for its county seat by a majority vote in 1896, the selection of the county seat in 1898 was invalid. Corson, J., dissenting.

State ex rel. Casper v. Porter et al. 13 S. D., 126. 82 N. W. 415.

§ 3. Whenever a majority of the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been located by a majority vote, specifying the place to which it is to be changed, said county board shall submit the same to the people of said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election, then the county seat shall be changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years.

The above section was amended by popular vote of 36,436 for, to 14,612 against, at the general election held November 4, 1902, to read as follows:

§ 3. Whenever a majority of the legal voters of any organized county shall petition the board to change the location of the county seat which has once been located by a majority vote, specifying the place to which it is to be changed, said board shall sumbit the same to the people of the said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election (except as hereinafter provided) then the county seat shall be changed, otherwise not; *Provided, however*, that in cases where the county seat is not located at a railroad station and it is proposed to remove the same to the railroad station, then the proposition to change the county seat may be ratified by three-fifths of the votes cast at said election, upon the question of

such removal and in such case if the proposition to change the county seat be ratified by three-fifths of the votes cast at said election upon the question of such removal then the county seat shall be changed, otherwise not.

A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years.

COUNTY SEAT—REMOVAL.

A special act of the territorial legislature of 1885 authorizing the removal, by majority vote, of a county seat previously located by the vote of two-thirds of all the qualified electors is held to be superceded by, because repugnant to Sec. 3, Art. 9.

Remington v. Higgins. 6 S. D. 313. 60 N. W. 73.

COUNTY SEAT—PETITION FOR REMOVAL—IRREGULAR PROCEEDINGS—RECORDS—MANDAMUS.

Where a taxpayer and resident of a county presented a petition for a change of the county seat to the board of supervisors, and the board met to consider the same on a certain day, and found that the petition was signed by a majority of the legal voters of the county, which finding the auditor was directed to record, but which he failed to do, and the board thereafter willfully, falsely, and fraudulently refused to enter such finding in its records, with intent to falsify the same, the petitioner was entitled to maintain mandamus against the board to compel it to amend the record according to facts under Rev. Code Civ. Proc. § 764, providing that mandamus may be maintained to compel the performance by any board or person of an official duty enjoined by law.

State ex. rel. Andrews v. Boyden et al., County Commissioners et al., 18 S. D., 288. 100 N. W. 763.

COUNTY SEAT—CHANGE OF LOCATION—SUBMISSION TO VOTE.

At any time before a valid order was entered granting a petition filed under the constitutional provision, a signer of the petition had a right to withdraw his name, after which it could not be counted to make up the specified number.

State ex rel Andrews v. Boyden, 18 S. D. 388. 108 N. W. 897.

§ 4. The legislature shall provide by general law for organizing the counties into townships, having due regard for congressional township lines and natural boundaries, and whenever the population is sufficient and the natural boundaries will permit, the civil townships shall be co-extensive with the congressional townships.

§ 5. In each organized county at the first general election held after the admission of the State of South Dakota into the union, and every two years thereafter, there shall be elected a clerk of the court, sheriff, county auditor, register of deeds, treasurer, state's attorney, surveyor, coroner, and superintendent of schools, whose terms of office respectively shall be two years, and except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above named offices.

§ 6. The legislature shall provide by general law for such county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers.

SPECIAL ACTS—CLERKS OF COURTS—COMPENSATION.

A law operating upon all and in like manner affecting every person in this state, who is brought within the conditions and relations for which it provides, is not repugnant to a constitutional provision, which requires that all laws relating to courts shall be of general and uniform operation throughout the state. The laws of 1890, c. 81, sec. 10 relating to compensation of clerks of courts is not in conflict with Art. 9 sec. 6.

Minnehaha County v. Thorne. 6 S. D., 449. 61 N. W. 688.

ELECTIONS—NOMINATIONS BY PARTY CONVENTION.

The caucus law (Laws 1905, p. 145, c. 107) provides that all party nominations of candidates for county officers shall be made as provided for

in the statute. Section 5 provides when county conventions for the purpose of nominating candidates for county officers shall be held. The statute makes no provision for commissioner district conventions. Prior to the statute, Rev. Pol. Code, § 810, provided that the different counties of the state should be divided into commissioner districts, and the commissioners selected from the districts, and that all conventions for the nomination of county commissioners should be held by the district from which the commissioner was to be selected, and only voters of that district to participate in the convention. Const. Art. 9, § 6, declares that the Legislature shall provide by general law for county officers, and by Rev. Pol. Code, §§ 809-865, county government is intrusted to a board of county commissioners. Held, that the statutory rule regarding party nominations for the office of county commissioner was changed by the act of 1905, and a republican county convention alone could make republican party nominations for such office.

State ex rel. Long et al. v. Rexford, County Auditor, 21 S. D. 86. 109 N. W. 216.

The following amendment to Section 7, Article IX, was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 35,806 for, and 15,971 against:

§ 7. All county, township and district officers shall be electors in the county, township or district in which they are elected, provided that nothing in this section shall prevent the holding of school offices by any person as provided in section 9, article VII; and provided, further, that the legislature shall have authority to prescribe additional qualifications for superintendent of schools, not inconsistent herewith.

ARTICLE X.

MUNICIPAL CORPORATIONS.

§ 1. The legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that no such corporations shall have any powers, or be subject to any restrictions other than those of all corporations of the same class. The legislature shall restrict the power of such corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power.

CITIES—ORGANIZATION—CHARTERS—RE-ORGANIZATION.

Const. Art. 10, § 1, requiring the legislature to provide by general law for the organization of cities, and Laws 1890, Chap. 37, providing for a system by which cities may surrender their charters and organize under a general law as provided therein, do not repeal the special charter of a city failing to organize under such law.

Tripp v. City of Yankton, 10 S. D., 516. 74 N. W. 447.

CITY COUNCIL—TAX LEVY—AMOUNT.

Laws 1890, Chap. 37, Art. 10, § 7, declares that a city council shall at the first regular meeting in September, or within 10 days thereafter, levy a tax for general purposes sufficient to meet the expenses of the year, based upon an estimate furnished by the city auditor, or a committee of the city council. Held, that the legislature not having restricted the powers of municipal corporations, as directed by the Constitution, a city had authority to make a levy of 15 mills for general purposes, 5 mills for interest and sinking fund, and 10 mills for school purposes in 1890.

Henderson v. Hughes County et al., 13 S. D., 576. 83 N. W. 682.

§ 2. Except as otherwise provided in this constitution, no tax or assessment shall be levied or collected, or debts contracted by municipal corporations, except in pursuance of law, for public purposes specified by law; nor shall money raised by taxation, loan or assessment, for one purpose ever be diverted to any other.

ARTESIAN WELLS—TAXATION.

Artesian wells sunk by townships at the expense of the taxpayers, as authorized by Laws, 1891, Chap. 80, and laws 1895, Chap. 103,—the water to be placed in tanks in the public highways, to supply the general public for watering stock and other domestic uses, and to be used for irrigation purposes,—is for a public purpose, within Const. Art. 10.

Miles v. Benton Township et al., 11 S. D., 450, 78 N. W. 1004.

EXPENDITURE—LIMIT OF—TOWN SUPERVISORS—POWERS.

Town supervisors have no authority to appropriate or expend in the construction or repair of highways any funds raised for ordinary town charges.

Aldrich et al. v. Collins, Supervisor, et al., 3. S. D., 154. 52 N. W. 854.

TAX LEVY—TO SATISFY JUDGMENT.

Where the demand upon a city is that it levy a sufficient tax to pay a judgment outstanding against the city, and the alternative writ follows the demand, the court may upon hearing, issue its premptory writ, commanding the city to levy the full amount of the tax it is authorized by its charter to levy, and to pay upon such judgment any surplus in any city fund remaining after the current expenses of the city for the fiscal year have been paid. Such direction to pay upon the judgment such surplus funds is not in violation of sec. 2, Art. 10.

Howard v. City of Huron et al. 6 S. D., 180. 60 N. W. 803. See also Howard v. City of Huron et al. 5 S. D., 539.

CITY TAXES—WARRANTS—DIVERSION OF FUNDS.

Respondent contends that, if these statutory provisions, (Chap. 21, Laws 1891), allow the city taxes of one year to be paid in warrants of preceding years, they violate section 2 of article 10 of the Constitution. This he claims on the theory that the tax assessed for the purpose of meeting the expenses of one year would be thus diverted to the payment of the expenses of a different year. We do not think this provision can be fairly so interpreted. We think the term "purpose" is so used with reference to the specific objects for which money may be raised by taxation.

Western Town Lot Co. v. Lane, 7 S. D., 604. 65 N. W. 17. See also 7. S. D. 5; 62 N. W. 982.

PUBLIC REVENUE—PARTICULAR FUNDS.

Comp. Laws, §§ 1671-1679, inclusive. As the effect of this law is to keep the public revenue in the particular fund to which it belongs, and to prevent any diversion of the same or application thereof to a purpose other than that for which the money was raised by taxation, loan or assessment, we find its various provisions in perfect harmony with section 2 of Article 10 of the Constitution of this state.

State ex rel. City of Huron v. Campbell, 7 S. D., 572. 64 N. W. 1125.

INDEBTEDNESS—WARRANTS—VALIDITY OF.

A city has no authority to incur indebtedness for expense of a campaign to secure the selection of the city as the capital of the state. Warrants issued in payment of such expenses are void. Warrants issued by a city for current expenses, after the constitutional indebtedness has been reached, but in anticipation of a tax already levied, are valid to the extent of the taxes levied.

Shannon et al. v. City of Huron, 9 S. D., 356. 69 N. W. 598.

§ 3. No street passenger railway or telegraph or telephone line shall be constructed within the limits of any village, town or city without the consent of its local authorities.

TELEPHONE—RIGHTS OF CITY COUNCIL—RIGHTS OF CORPORATIONS.

1. This section limits the power of the legislature in granting rights to telephone companies, but does not grant legislative power to municipal councils; and though the legislature may not authorize the construction of any telephone system in any city without the latter's consent, the city has no

power to impose any conditions or establish any regulations other than those permitted by the legislature.

2. Under Rev. Civ. Code, sec. 554, a domestic corporation engaged in building and operating a telephone system may construct its lines over public grounds, streets and highways, subject to control of proper municipal authorities as provided by the Constitution Art. 10, sec. 3, subject to Art. 6, sec. 12.

Missouri River Telephone Co. v. City of Mitchell, 22 S. D. —— 116 N. W. 67.

ARTICLE XI.

REVENUE AND FINANCE.

The following amendment to Section 1, Article XI, was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 32,285 for, and 19,895 against:

§ 1. The legislature shall provide for an annual tax, sufficient to defray the estimated ordinary expenses of the state for each year, not to exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes.

And whenever it shall appear that such ordinary expenses shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of such ensuing year. And for the purpose of paying the public debt, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state as ascertained by the last assessment made for the state and county purposes.

Provided, that for the purpose of establishing, installing, maintaining and operating a hard fiber twine and cordage plant at the state penitentiary at Sioux Falls, South Dakota, the legislature shall provide for a tax for the year 1907 of not to exceed one and one-half mills on each dollar of the assessed valuation of all taxable property in the state, as ascertained by the last assessment made for state and county purposes.

STATE TAXATION—LIMITATIONS—PUBLIC DEBT — LEGISLATIVE POWERS.

1. Const. Art. 11, § 1, relates to three distinct items of taxation: (1) The annual tax for "the estimated ordinary expenses of the state;" (2) taxation to pay deficiencies from preceding years; (3) taxation to pay the public debt.

2. The legislature is limited to a two-mill tax for the first and third items mentioned; but when a dificiency is shown to exist, resulting from the excess of ordinary expenses over the fund available for that purpose; the legislature has power to levy an assessment sufficient to meet the dificiency, without regard to the two-mill limitation, and the money raised for such deficiency must be used exclusively for its payment, and cannot be diverted to any other use.

3. Const. Art. 11, section 8, provides that "no tax shall be levied, except in pursuance of law, which shall distinctly state the object of the same, to which the tax only shall be applied." Art. 12, section 2, provides that "the general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative, and judicial departments of the state, the current expenses of state institutions, interest on the public debt and for common schools. All other appropriations shall be made by separate bills each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature." Held, that the two-mill limitation applies only to the items embraced within the "general appropria-

tion bill," which items constitute the "ordinary expenses," within the meaning of Article 11, section 1, but as to "all other appropriations" to meet the extraordinary expenses of the state the legislative power is controlled only by their sense of justice, as expressed by a two-thirds vote of all the members of each house.

4. A law providing for the levy of a tax for an extraordinary expense must clearly state its object, and the tax so raised cannot be diverted to any other use.

In re Limitation of Taxation, 3 S. D., 456. 54 N. W. 417.

§ 2. All taxes shall be uniform on all property and shall be levied and collected for public purposes only. The value of each subject of taxation shall be so fixed in money that every person and corporation shall pay a tax in proportion to the value of his, her or its property. Franchises and licenses to do business in the state, gross earnings and net income, shall be considered in taxing corporations and the power to tax corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party. The legislature shall provide by general law for the assessing and levying of taxes on all corporate property, as near as may be by the same methods as are provided for assessing and levying of taxes on individual property.

TAXATION — EXEMPTION — STATUTES — DEDUCTION OF INDEBTEDNESS.

1. Construing Art. 11, Sec. 2, 4, 5, 6, 7. Held that Act March 9, 1891, § 18, in providing for the deduction of indebtedness from the amount of credits and personal property, and section 19, prescribing what indebtedness should not be deducted and the manner of verification of deductions, while no provision is made for deducting the same from the value of the real estate of tax payers, provide for unequal taxation, are in conflict with the Constitution, and void.

2. Such sections of the revenue act also produce inequality and want of uniformity in taxation, and are unconstitutional, in that they permit the deduction from personal property of indebtedness held within the state but permit no deduction of indebtedness held without the state.

In re Assessment and Collection of Taxes. 4 S. D., 6, 54 N. W. 810.

LIQUOR LICENSE—POLICE REGULATION—FEE.

Laws 1897, Chap. 72, provides for an annual license fee of $400, beginning July 1st, to be paid in advance to the county treasurer by retail liquor dealers, or a pro rata sum in case application is made after July 1st. all licenses expiring the following June 30th. It requires each applicant to file an approved bond with the county treasurer, and allows the authorities of a city, organized town, or township to levy and collect an additional license, which must be paid before the applicant can engage in the trafic. Such authorities may refuse to grant a license if they deem the applicant unfit, and in that event the money paid to the county treasurer shall be returned to the applicant on the warrant of the board of county commissioners. Section 7 provides that all such moneys received by a county treasurer shall by him be placed to the credit of the general fund of the county, and, on each license granted, he "shall transmit the sum of $150 to the state treasurer," which shall be placed to the credit of the general fund of the state. Held, that the statute is a police regulation, and the license fee is not therefore a tax, within Const. Art. 11, requiring uniformity of taxation.

State ex rel. Grigsby, Atty. Gen. v. Buechler, County Treasurer, 10 S. D. 156. 72 N. W. 114.

ARTESIAN WELLS—ASSESSMENT FOR.

Laws 1889, Chap. 14 § 15, subd. 3, providing for a direct artesian well assessment on lands for construction of such a well and water courses, to be adjusted "with reference to the relative distance of such lands from the well itself and the water courses," violate Art. 11, Sec. 2.

Turner v. Hand County, 11 S. D., 348. 77 N. W. 589.

TAXATION—VALUE.

1. There are no limitations on the power of the legislature except such as are imposed by the state and federal Constitutions, and no legislative act should be declared unconstitutional unless it palpably conflicts with some principal of constitutional law.

2. Const. Art. 11, § 2, construed with Art. 6, Sec. 17, and Art. 11, sec. 3, requires all property not expressly exempted by the Constitution to be taxed according to its value, but does not by implication preclude other methods of taxation, such as taxes on occupations.

In re Watson, 17 S. D., 186. 97 N. W. 463. See also sec. 7. In re Construction Revenue law, 2 S. D., 58; 48 N. W. 813.

§ 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

§ 4. The legislature shall provide for taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects, or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

§ 5. The property of the United States and of the state, county and municipal corporations, both real and personal shall be exempt from taxation.

EXEMPTION.

Where a city exempted from taxation a tract of land belonging to a town-lot company, and used and maintained the same as a city park, the exemption was not invalid, under Const. Art. 11, §§ 5-7, since the transaction in substance amounted to an exercise of the authority given by Laws 1890, Chap. 37, Art. 5, § 1, Subd. 44.

Henderson v. Hughes County et al., 13 S. D. 577. 82 N. W. 682.

HOMESTEAD—CHANGE OF ENTRY—REJECTION.

Where a homestead entry on government land was changed into a cash entry, which was suspended, and the proof of residence finally rejected, by the United States land department, necessitating the making of new proof thereafter, on which the patent issued, the land did not become taxable under state authority until the second proof was made, leaving nothing further to be done by the purchaser to perfect his equitable title and his right to a patent; and a sale of the land for taxes theretofore levied was void.

Duncan v. Newcomer, 9 S. D., 375. 69 N. W. 580.

§ 6. The legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation.

NON-EXEMPTION.

A building owned by a charitable institution, but part of which is used for a store, cannot be exempt, though the rents are used for charitable purposes.

State ex rel. Hayes, State's Atty. v. Board of Equalization for Lawrence County et al., 6 S. D., 219. 92 N. W. 16.

§ 7. All laws exempting property from taxation, other than that enumerated in sections 5 and 6 of this article, shall be void.

CREDITS—DEBTS—DEPRECIATION OF INDEBTEDNESS.

1. Act March 9, 1891, §§ 18, 19, allowing persons, in listing credits for taxation, to deduct from the gross amount thereof all bona fide indebtedness, without specifying whether the debts must be owing within or without the state, and further providing that deductions from the amount of personal property shall be allowed of such indebtedness only as is due

within the state; and making no provision for deducting indebtedness from the value of real estate, are in contravention of Const. Art. 11, § 2, and Section 4.

2. Such sections, in so far as they allow deductions of indebtedness from the value of the property liable to taxation, are a violation of Const. S. D. Art. 11, § 7.

In re Construction of Revenue Law. Sec. 18, 19, 2 S. D., 58. 48 N. W. 813.

CREDITS—ASSESSMENT OF.

The second section of Article 9 of the Constitution of Pennsylvania provides: "All laws exempting property from taxation, other than the property above numerated, shall be void." The exception of "notes or bills for work or labor done," is void under this provision, and drops out of the act of 1885. The exception falls, but the act stands. It will be the duty of the assessors to assess and return such bills or notes the same as other moneyed securities in the hands of individuals.

In re Assessment and Collection of Taxes, 4 S. D., 20. 54 N. W. 818, 832.

EXEMPTION—TAX RECEIPT—EVIDENCE.

Laws 1890, p. 318, c. 150, § 3, providing that possession of a tax receipt shall be conclusive evidence that all prior taxes on the property have been paid, and shall be a bar to their collection, is repugnant to Const. Art. 11, § 7, Haney P. J., dissenting in part.

Harris v. Stearns, County Treasurer. 17 S. D. 439. 97 N. W. 361. See also Harris v. Stearns. 108 N. W. 247. (Reversal.)

§ 8. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

In re Limitation of Taxation, 3 S. D. 456. Cap. 54 N. W. 417.

TAX LEVY—MUNICIPAL—USE.

The counsel for the city have called our attention to two provisions in the state Constitution which they insist settle the question in their favor. These are section 8 of Article 11, and sec. 8, Art. 10. The error in the counsel's position is that the city is authorized to levy a 10-mill tax for city purposes, not a specific tax for one designated municipal purpose, and a specific tax for another, etc. Neither the Constitution, laws of the state, nor the charter so provide. The charter declares the city may levy a tax not exceeding 10 mills on the dollar for municipal purposes. The Constitution declares that "no tax shall be levied, except in pursuance of a law, which shall distinctly state the object," etc. When, therefore, the city levies a tax for municipal purposes not exceeding 10 mills on the dollar, it does so by authority of law; and the object is distinctly stated, namely, municipal purposes; and the tax so levied cannot be used for other than municipal purposes. To give these constitutional provisions a more limited or restricted construction would clearly be against the evident intention of the framers of the constitution, and lead to embarrassing result.

Western Town Lot Co. v. Lane, 7 S. D., 5. 62 N. W., 982. Western Town Lot Co. v. Lane, 7 S. D., 604. 65 N. W. 17. See Art. 11, Sec. 1.

§ 9. All taxes levied and collected for state purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the state, and no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made. The legislature shall provide by suitable enactment for carrying this section into effect.

WARRANTS—WHEN AUDITOR MAY DRAW.

Carter vs. Thorson, Secretary of State, 5 S. D. 474; Van Dusen et al. vs. State, 11 S. D. 318; Stanton vs. State, 5 S. D. 515.

When an appropriation made by the legislature for any specific purpose has been exhausted, the action of the auditor in refusing to draw further warrants for that specific purpose is proper and right.

Collins v. State, 3 S. D., 18. 51 N. W. 776.

ACTION AGAINST STATE—SUBSISTENCE FURNISHED STATE FORCES—SUPPRESSING INSURRECTION—POWERS OF GOVERNOR.

1. One having furnished subsistence for troops called into service by the

governor. Held, that a claim to recover for such subsistence cannot rest upon contractual rights, for the creation of such rights in such manner is expressly forbidden by the Constitution.

2. The power to adjust and pay such claim is in the legislature alone, and is only saved to it by the specific and exceptional authority conferred upon it by the concluding portion of section 3, Art. 12: "The legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Stanton v. State, 5 S. D., 515. 59 N. W. 738.

PUBLIC PRINTING—CONTRACT BY STATE—INCURRING INDEBTEDNESS—APPROPRIATIONS.

1. Chapter 99, Laws 1891, divides the public printing of the state into classes, and directs the secretary of state as ex-officio commissioner of public printing, to advertise for bids for doing the same, and to make contracts with the best, and lowest bidders for doing such printing as the state may require. Held, that a contract so made does not "incur an indebtedness on the part of the state, within the meaning of section 9, Art. 11.

2. Such contract imposes no obligation upon the state to have any work done, but, in effect, simply designates the parties who are entitled to do whatever work of the several classes the state may require, and fixes the compensation therefor, if any shall be so required and done.

3. Except as made by the Constitution itself, the legislative department alone has power to make appropriations from the state treasury for the payment of state indebtedness.

4. The primary thought and purpose of said section 9, Art. 11, was to confine the creation of indebtedness to such subjects and to such amounts as were expressly approved by that department of the government which would be required to provide for its payment.

Carter v. Thorson, Secretary of State, 5 S. D., 474. 59 N. W. 469.

INDEBTEDNESS—SPECIAL APPROPRIATIONS—MISUSE OF—BURDEN OF PROOF.

1. Under Const. Article 11, § 9, and laws 1890, Chap. 108, providing that, where appropriations are made for periods longer than one year, the expenditures for one year shall never exceed the proportion which one year bears to the whole period,—the appropriation Act of March 9, 1891 (Laws 1891, Chap. 6), appropriating (Sections 1 and 11) for fuel and lights for an Agricultural College $2,000 per year "for the ensuing two years," and (Section 31) increasing each item therein, pro rata, to cover the period from March 8, to June 30, 1893 inclusive, authorized the agents of the State to procure fuel and light for the use of such college, at the expense of the state, to an amount not exceeding $2,000 during the period from March 8, 1891, to March 8, 1892, and not exceeding $2,620 during the period, from March 8, 1892, to and including June 30, 1893.

2. Plaintiff, during one of the periods, specified in the appropriation act of March 9, 1891 (Laws 1891, Chap. 6, § 11), furnished fuel for the Agricultural College to a certain amount, on request of its officers. During such period, the entire indebtedness incurred by such officers for fuel and lights aggregated an amount, including the sum due plaintiff, less than the amount appropriated for such purpose for such period. Held, that such indebtedness to plaintiff constituted a legal claim against the state, the validity of which was not impaired by the misuse of such appropriation in the payment of indebtedness contracted during another period.

3. In an action against the state to recover for fuel furnished the Agricultural college on request of its officers, the burden was on the plaintiff to show that the indebtedness so contracted was incurred at a time when the agents of the state were authorized to make such purchase, in view of the constitutional provisions Article 11, § 9, and Article 12, § 3.

Van Dusen et al. v. State. 11 S. D., 318. 77 N. W. 201.

§ 10. The legislature may vest the corporate authority of cities, towns and villages, with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

§ 11. The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law.

FUNDS—DEPOSIT—BOND LIABILITY OF OBLIGOR.

1. A general deposit by a county treasurer, of county funds, subject to check is not a "loan" within the statutory or constitutional inhibition against the loaning of county funds, with or without interest.

2. On a bond conditioned on the repayment by a bank of county funds deposited by the county treasurer, the obligors are liable for the repayment of the amount of a certificate of deposit given the obligee for money deposited with the bank before the execution of the bond, and subsequently redelivered to the bank, and the amount of the certificate credited to the obligee.

Allibone, Treasurer, v. Ames et al. 9 S. D., 74. 68 N. W. 165.

§ 12. An accurate statement of the receipts and expenditures of the public moneys shall be published annually, in such manner as the legislature may provide.

ARTICLE XII.

PUBLIC ACCOUNTS AND EXPENDITURES.

§ 1. No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

§ 2. The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature.

See Art. 9, Sec. 1.

§ 3. The legislature shall never grant any extra compensation to any public officer, employee, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the state, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during his term of office; *Provided, however*, that the legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

See Stanton v. State, Art. 11, Sec. 9.

EXAMINATION OF LEGISLATIVE JOURNAL—ASSISTANT SUPERINTENDENT OF INSTRUCTION—INCREASE OF OFFICIAL SALARY.

1. Where two laws containing inconsistent provisions were approved by the governor upon the same day, and it becomes necessary to know which was the later expression of the legislative will, the court may, of its own motion, examine the legislative journals, and take judicial notice of what they show.

2. Section 6, c. 56, Sess. Laws 1891, empowers the superintendent of public instruction "to appoint an assistant or deputy, who * * * shall perform such duties pertaining to the office as the superintendent may direct." A deputy or assistant so appointed has no fixed term of office, but holds at the pleasure of the appointing power.

3. Section 3, Art. 12, of the Constitution does not apply to such deputy or assistant so appointed.

Somers v. State, 5 S. D., 321. 58 N. W. 804.

COMPENSATION OF OFFICER—CHANGE DURING TERM.

A deputy appointed by an officer, to hold during the pleasure of such principal, does not hold for a "term" within the meaning of section 3, Art. 12 of the Constitution.

Somers v. State. 5 S. D., 584. 59 N. W., 962.

REDUCING COMPENSATION OF VETERINARY SURGEON—ORGANIZATION OF TERRITORY INTO STATE—EFFECT ON TERMS OF OFFICE.

The appointment and acceptance of the office of veterinary surgeon by the plaintiff, under the provisions of the territorial statute in force at the time and the continuance of the same under the provisions of the state Constitution, left his office without any fixed term; and a law reducing the salary during the time he is performing the duties of it is not repugnant to Art. 12, Sec. 3.

Collins v. State. 3 S. D., 18. 51 N. W. 776.

OFFICERS—COMPENSATION—INCREASE.

Const. Art. 12, § 3, is not violated by Laws 1903, p. 94, c. 86, creating a new state board of charities and corrections, to take the place of the old and, among other things, providing that the compensation of members shall be a salary of $1,500 per annum, instead of a per diem of $3, under the old law.

Thomas et al. v. State, 17 S. D., 579. 97 N. W. 1011.

OFFICIALS—STATE—DEFINED.

Construed by its context, the provision of Article 12, § 3, includes under the term "public officers" only state officers who draw their salary from the state treasury, and does not include the county judges.

Hauser v. Seeley et al., 18 S. D. 308. 100 N. W. 437.

§ 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the legislature shall provide, and such statements shall be submitted to the legislature at the beginning of each regular session by the governor with his message.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

§ 1. Neither the state nor any county, township or municipality shall loan or give its credit or make donations to or in aid of any individual association or corporation except for the necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor pay or become responsible for the debt or liability of any individual, association or corporation; *Provided*, that the state may assume or pay such debt or liability when incurred in time of war for the defense of the state. Nor shall the state engage in any work of internal improvement.

TERRITORIAL STATUTES—RETROACTIVE LEGISLATION—COMPENSATION TO FIRE COMPANIES.

1. Whether or not any particular territorial law, or any independent provision, survived the adoption of the state Constitution, and so continues in force as the law of the state, depends upon whether or not such law or such provision is obnoxious to any rule or provision of the Constitution.

2. Since from the property of the state is largely derived the revenue of the State, it is within the legitimate powers of a state government to employ general means for the protection of the property, as well as the persons, of its citizens.

3. To accomplish such protection, and as a means of securing greater efficiency in the fire departments and service of the state, the legislature may lawfully offer, by general law, a compensation or reward to such fire com-

panies as will comply with conditions therein named, designed to promote their usefulness and competency; and acceptance and compliance with such conditions constitute a sufficient consideration for an appropriation by the legislature to redeem such promise.

4. Such appropriation is not a "donation," within the meaning of section 1, Art. 13, of the Constitution.

Cutting, City Treasurer, v. Taylor, State Auditor. 3 S. D., 11. 51 N. W. 949.

§ 2. For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in revenue, the state may contract debts never to exceed with previous debts in the aggregate $100,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state or the United States in war and provision shall be made by law for the payment of the interest annually, and the principal when due, by tax levied for the purpose or from other sources of revenue; which law providing for the payment of such interest and principal by such tax or otherwise shall be irrepealable until such debt is paid; *Provided, however*, the State of South Dakota shall have the power to refund the territorial debt assumed by the State of South Dakota, by bonds of the State of South Dakota.

STATES—INCURRING INDEBTEDNESS—WHAT CONSTITUTES—WARRANTS TO DEFRAY CURRENT EXPENSES.

1. Appropriations from the assessed but uncollected revenues of the state, and the issuance of warrants in pursuance thereof to defray current expenses, is not the incurring of an indebtedness, within Const. Art. 13, § 2.

2. Revenues of the state, assessed and in process of collection, are to be considered as constructively in the treasury, and may be appropriated and treated as though actually there.

3. That warrants issued in anticipation of such assessed revenues draw interest does not make the issuance of the warrants an incurring of an indebtedness to the extent of such interest, within Const. Art. 13, § 2, where such warrants, with respect to interest, are not different from other warrants which may properly be drawn and issued.

In re State Warrants 6 S. D., 518. 62 N. W. 101. See also Art. 8, Sec. 2, 13.

BONDS—SALE—LOSSES.

1. Act March 12, 1895, directing the issue and sale of State bonds to make good losses to the permanent school fund and to the interest and income funds, caused by the defalcation of the late state treasurer is not repugnant to Const. Art. 13, section 2, limiting the State's power to "contract debt."

2. Const. Art. 8, sections 2, 13, provide that the state shall make good all losses to the perpetual school fund; and that losses caused by the defalcation or mismanagement of the officer controlling the fund shall be a permanent funded debt against the state, which shall not be counted as a part of the indebtedness to which the state is limited by Const. Art. 13, § 2.

3. Article 8, Sec. 3, declares that no part of the fund "either principal or interest," shall be diverted from its purpose. Held, that the state must make good all losses to the interest and income funds as well as to the permanent fund, and for this purpose the legislature may authorize the issue of bonds.

In re State Bonds, 7 S. D., 42. 63 N. W. 223.

§ 3 That the indebtedness of the State of South Dakota limited by section two of this article shall be in addition to the debt of the territory of Dakota assumed by and agreed to be paid by South Dakota.

AGRICULTURAL COLLEGE—CONTRACTS OF DIRECTORS—RATIFICATION BY STATE—TERRITORIAL LIABILITIES—DIVISION BETWEEN STATES.

Article 13 of the state Constitution, together with a corresponding article in the constitution of North Dakota, was designed to divide the territorial lia-

bilities between the two states of North and South Dakota, and indicate what each state should assume and pay.

A claim against the territoroy of Dakota, if valid, as belonging to the class which, by agreement, South Dakota was to pay, may be enforced against the state, although never specifically adjusted between the two states.

Jewel Nursery Co. v. State. 4 S. D., 213. 56 N. W. 113. See Art 5, Sec. 31.

§ 4. The debt of any county, city, town, school district, civil township, or other subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein. In estimating the amount of indebtedness which a municipality or subdivision may incur the amount of indebtedness contracted prior to the adoption of this constitution shall be included.

Provided, that any county, municipal corporation, civil township, district or other subdivision, may incur an additional indebtedness not exceeding ten per centum upon the assessed value of the taxable property therein for the purpose of providing water for irrigation and domestic uses. *Provided, futher*, that no county, municipal corporation or civil township shall be included within any such district or subdivision without a majority vote in favor thereof of the electors of the county, municipal corporation or civil township, as the case may be which is proposed to be included therein, and no such debt shall ever be incurred for any of the purposes in this section provided; unless authorized by a vote in favor thereof of a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same.

NOTE—The foregoing section (4) was submitted by the legislature in 1895, as an amendment to Section 4 of Article 13, of the Constitution, and was adopted at the general election of 1896 by a vote of 28,490 for, and 14,789 against.

That at the general election held on November 4, 1902, Section 4 of Article 13 of the Constitution was amended by a popular vote of 32,810 for, to 13,599 against, so as to read as follows:

"SECTION 4. The debt of any county, city, town, school district, civil township or other sub-division, shall never exceed five (5) per centum upon the assessed valuation of the taxable property therein for the year preceding that in which said indebtedness is incurred.

"In estimating the amount of the indebtedness which a municipality or subdivision may incur, the amount of indebtedness contracted prior to the adoption of the constitution shall be included;

"*Provided*, That any county, municipal corporation, civil township, district or other subdivision may incur an additional indebtedness not exceeding ten per centum upon the assessed valuation of the taxable property therein for the year preceding that in which said indebtedness is incurred, for the purpose of providing water and sewerage for irrigation, domestic uses, sewerage and other purposes; and

"*Provided, further*, That in a city where the population is 8,000 or more, such city may incur indebtedness not exceeding eight per centum upon the assessed valuation of the taxable property therein for the year next preceding that in which said indebtedness is incurred for the purpose of constructing street railways, electric lights or other lighting plants.

"*Provided, further*, That no county, municipal corporation, civil township, district or subdivision shall be included within such district or subdivision without a majority vote in favor thereof of the electors of the county, municipal corporation, civil township, district or other sub-division as the case may be, which is proposed to be included therein, and no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof by a majority of the electors of such county, municipal corporation, civil township, district or sub-division incurring the same."

BONDS—WARRANTS—COUNTY.

The issuance of 4 per cent bonds by a county to refund 7 per cent warrants, as allowed by Laws 1901, c. 94, was not unlawful, though it had already exceeded the limit of 5 per cent, indebtedness allowed by Const. Art. 13, § 4, since

by the exchange of the bonds for the warrants the indebtedness would be diminished, rather than increased.

Walling v. Lumis, 16 S. D., 350; 92 N. W. 1063.

CITIES—INDEBTEDNESS—INCREASE OF—WATER.

1. Const. Art. 13, § 4, as amended in 1896, permitted cities, in addition to the 5 per cent indebtedness originally allowed, to incur an additional indebtedness, when authorized by a majority vote of the electors, not exceeding 10 per cent, of the assessed value of taxable property, for the purpose of providing water for irrigation and domestic uses. Held, that the power to incur a 10 per cent indebtedness for providing water was conferred regardless of existing indebtedness for other purposes.

2. A proposition, favorably acted on by the voters of a city, authorizing the issuance of bonds to the extent of $210,000 for a given purpose, conferred authority to issue such bonds in installments of less amounts as they became necessary.

Wells v. City of Sioux Falls et al., 16 S. D., 547. 94 N. W. 425.

MUNICIPAL CORPORATIONS—LIMIT OF INDEBTEDNESS—MONEY IN SINKING FUND—INCURRING DEBT—SUBMISSION TO VOTE—MAJORITY.

1. In determining whether a city's limit of indebtedness, prescribed by Const. Art. 13, § 4, has been reached, money in the sinking fund and applicable, under the Constitution, only to payment of bonded indebtedness not yet matured, is to be deducted from its debt.

2. The concurrence of less than a majority of all the electors of the city, though constituting a majority of those voting on the proposition, is insufficient.

Williamson v. Aldrich et al. 21 S. D., 13; 108 N. W. 1063.

§ 5. Any city, county, town, school district or any other subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrepealable until such debt be paid.

BONDS—EDUCATIONAL—PAYMENT.

1. A board of education authorized to issue bonds cannot allege, as a defense thereto against a bona fide purchaser, that it failed to comply with Const. Art. 13, § 5, where the bonds contained a recital "that all conditions and things required to be done, precedent to and in the issue of said bonds, have duly happened and been performed as required.

2. The failure of a board of education to comply with section 5 does not relieve it from the obligation to thereafter provide for the payment of bonds issued in violation thereof.

Wilson v. Board of Education, 12 S. D., 536. 18 N. W. 952.

CITIES—APPLICATION OF TERM "ANY."

That the provision of the Constitution apply to all cities does not admit of doubt. Giving to the term "any" this construction, it would apply to all of the cities of the state, whether organized under special charters or under the general laws of the state.

Heyler v. City of Watertown, 16 S. D., 27. 91 N. W. 334.

TAX LEVY—LIMIT.

The provision of the laws of 1899 p. 44, c. 41, that the total county tax rate shall not exceed 8 mills on the dollar for all purposes, violates Art. 13, Sec. 5.

Fremont, E. and M. V. R. Co. v. Pennington Co. et al., 20 S. D. 270. 116 N. W. 75.

§ 6. In order that the payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act

of congress approved February 22, 1889, entitled "An act to Provide for the Division of Dakota into two states and to Enable the People of North Dakota, South Dakota, Montana and Washington to form Constitutions and State Governments and to be Admitted into the Union on an Equal Footing with the Original States, and to Make Donations of Public Lands to such States" the States of North Dakota and South Dakota, by proceedings of a Joint Commission, duly appointed under said act, the sessions whereof were held at Bismarck in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to-wit:

1. This agreement shall take effect and be in force from and after the admission into the Union, as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

2. The words "State of North Dakota" wherever used in this agreement, shall be taken to mean the Territory of North Dakota, in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

3. The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the Legislative assembly of the Territory of Dakota, approved March 3, 1889, entitled An Act to provide for the refunding of outstanding warrants drawn on the capitol building fund.

4. The said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

5. That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is two hundred and sixty-six thousand dollars; also bonds issued on account of the North Dakota University at Grand Forks, North Dakota; the face aggregate of which is ninety-six thousand seven hundred dollars; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is ninety-three thousand six hundred dollars; also refunding capitol building warrants dated April 1, 1899, eigthy three thousand and five hundred and seven dollars and forty-six cents.

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the Hospital for the Insane at Yankton, South Dakota, the face aggregate of which is two hundred and ten thousand dollars; also, bonds issued on account of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is fifty-one thousand dollars; also, bonds issued on account of the University at Vermillion, South Dakota, the face aggregate of which is seventy-five thousand dollars; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is ninety-four thousand three hundred dollars; also, bonds issued on account of the agricultural college, at Brookings, South Dakota, the face aggregate of which is ninety-seven thousand five hundred dollars; also bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is forty-nine thousand four hundred dollars; also bonds issued on account of school of mines at Rapid City, South Dakota, the face aggregate of which is thirty-three thousand dollars; also,

bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is thirty thousand dollars; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is twenty-five thousand dollars; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is forty-five thousand dollars.

6. The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore and hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

7. The State of South Dakota shall pay to the State of North Dakota forty-six thousand five hundred dollars on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library and in full settlement of unbalanced accounts, and of all claims against the Territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of the Northern Pacific Railroad lands, and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had which liability would be a liability of the Territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institution; grounds or buildings of the territory situated or located within the boundaries of the other state.

8. A final adjustment of accounts shall be made upon the following basis. North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8th, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8th, 1889, to the time of taking effect of this Agreement by any county, municipality or person within the limits of the proposed State of North Dakota, shall be credited to the State of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations since the 8th day of March 1889, based upon earnings of years prior to 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7th, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being Chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the territory) shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into said treasury under and by virtue of the Act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much therof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota; Each state shall be credited also with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory

of Dakota for the account of public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8th, 1889. If there be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final ajustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state as provided in this Article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged to it.

§ 7. And the State of South Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing Agreement to be its portion thereof, the same as if such proportion had been originally created by said State of South Dakota as its own debt or liability.

§ 8. The Territorial Treasurer is hereby authorized and empowered to issue refunding bonds to the amount of $107,500,00, bearing interest not to exceed the rate of four per cent, per annum, for the purpose of refunding the following described indebtedness of the Territory of Dakota, to-wit:

$77.500.00 5 per cent bonds, date May 1st, 1883, issued for the construction of the West Wing of the Insane Hospital at Yankton and $30,000.00, 6 per cent bonds dated May 1st, 1883, issued for permanent improvements Dakota Penitentiary, at Sioux Falls, such refunding bonds, if issued, to run for not more than twenty years, and shall be executed by the governor and treasurer of the Territory, and shall be attested by the secretary under the great seal of the Territory.

In case such bonds are issued by the Territorial Treasurer as hereinbefore set forth, before the first day of October, 1889, then upon the admission of South Dakota as a state it shall assume and pay said bonds in lieu of the aforesaid Territorial indebtedness.

ARTICLE XIV

STATE INSTITUTIONS.

§ 1. The charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school.

§ 2. The state institutions provided for in the preceding section shall be under the control of the State Board of Charities and Corrections, under such rules and restrictions as the legislature shall provide; such board to consist of not to exceed five members, to be appointed by the governor and confirmed by the senate, and whose compensation shall be fixed by law.

MEMBERS—TERMS OF OFFICE—APPOINTMENT—VACANCY.

1. Since Const. Art. 14, § 2, creating the board of charities and corrections, to be appointed by the governor, the Laws 1890, Chap. 5, §§ 1, 3, prescribing the number and qualifications of the members of the board, and fixing their term of office, contain no authority for holding over, the office of each member becomes vacant at the expiration of his term unless his successor has been appointed.

2. Since Const. Art. 14, § 2, creating the board of charities and corrections, to be appointed by the governor, and Laws 1890, Chap. 5, §§ 1, 3, prescribing the number and qualifications of members of the board, and fixing their term of office, contain no provision for filling vacancies the governor has power to fill vacancies by appointment for the full unexpired term, under the authority conferred on him by Const. Art. 4, § 8.

State ex rel. Lavin et al., v. Bacon et al., 14 S. D. 284. 85 N. W. 225. See also 85 N. W. 605 same title.

STATUTORY PROVISIONS.

Const. Art. 14, § 2, is not violated by Laws 1903, p. 94, c. 86, creating a new board, of three members, to take place of the old board, of five, with a proviso that nothing in the act shall operate to legislate out of office any member of the old board.

Thomas et al. v. State, 17, S. D., 579. 97 N. W. 1011.

§ 3. The State University, the agricultural college, the normal schools and all other educational institutions that may be sustained either wholly or in part by the State shall be under the control of a board of five members appointed by the Governor and confirmed by the Senate under such rules and restrictions as the legislature shall provide. The legislature may increase the number of members to nine.

NOTE—This section (3) was submitted as an amendment to Constitution. Article 14, §3, by the legislature in 1895, and at the general election in 1896, was adopted by the following vote: 31,061 for, and 11,690 against.

REGENTS—TENURE OF OFFICE—VACANCY—APPOINTMENT.

1. There being no provision for their holding over, the term of regents is absolutely fixed at six years, and at its expiration, unless a successor has been appointed, the office becomes vacant.

2. Laws 1890, Chap. 6, Sec. 1, enacted to carry into effect the provision of the Constitution respecting regents of education, having failed to provide for the future appointment of regents, or for the filling of vacancies in the board, and having so fixed the terms of its members that they expire in even numbered years, when the senate is not in session, vacancies caused by the expiration of such terms are to be filled by the governor, under the general provisions of Const. Art. 4, Sec. 8.

State ex rel. Wood v. Sheldon. 8 S. D., 525. 67 N. W. 613.

§ 4. The regents shall appoint a board of five members for each institution under their control, to be designated the board of trustees. They shall hold office for five years, one member retiring annually. The trustees of each institution shall appoint the faculty of the same, and shall provide for the current management of the institution, but all appointments and removals must have the approval of the regents to be valid. The trustees of the several institutions shall receive no compensation for their services, but they shall be reimbursed for all expenses incurred in the discharge of their duties, upon presenting an itemized account of the same to the proper officer. Each board of trustees at its first meeting shall decide by lot the order in which its members shall retire from office.

NOTE—Constitution Article 14, §4, was stricken from the Constitution by an amendment submitted by the legislature in 1895, and was adopted by the popular vote at the general election in 1896: 31,061 for, and 11,690 against.

OFFICE AND OFFICER—TRUSTEE OF STATE AGRICULTURAL COLLEGE —REMOVAL—STATE OFFICER DEFINED.

1. Where an officer is appointed for a definite term, subject to removal for specified causes, he can be so removed only after notice to him of the cause assigned, and an opportunity given him to defend.

2. A trustee of the state agricultural college appointed by the board of regents of education, as provided by section 4, Art. 14, of the Constitution, is not a "state officer," within the meaning of section 3, Art. 16.

State ex rel. Hitchcock v. Hewitt et al., Board of Regents of Education. 3 S. D., 187. 52 N. W. 875.

§ 5. The legislature shall provide that the science of mining and metallurgy be taught in at least one institution of learing under the patronage of the state.

ARTICLE XV.

MILITIA.

§ 1. The militia of the State of South Dakota shall consist of all able bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this state.

§ 2. The Legislature shall provide by law for the enrollment, uniforming, equipment and discipline of the militia and the establishment of volunteer and such other organizations or both, as may be deemed necessary for the protection of the state, the preservation of order and the efficiency and good of the service.

§ 3. The legislature in providing for the organization of the militia shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

§ 4. All militia officers shall be commissioned by the governor, and may hold their commissions for such period of time as the legislature may provide, subject to removal by the governor for cause, to be first ascertained by a court-martial pursuant to law.

§ 5. The militia shall in cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at muster and elections, and in going to and returning from the same.

§ 6. All military records, banners and relics of the state, except when in lawful use, shall be preserved in the office of the adjutant general as an enduring memorial of the patriotism and valor of South Dakota; and it shall be the duty of the Legislature to provide by law for the safe keeping of the same.

§ 7. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace.

ARTICLE XVI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

§ 1. The House of Representatives shall have the sole power of impeachment.

The concurrence of a majority of all members elected shall be necessary to an impeachment.

§ 2. All impeachments shall be tried by the senate. When sitting for that purpose the Senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial the presiding judge of the supreme court shall preside.

§ 3. The governor and other state and judicial officers, except County Judges, Justices of the Peace and Police Magistrates shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state. The person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

INSURANCE COMMISSIONER—REMOVAL.

Laws 1897, Chap. 69, § 5, authorizing the governor at his pleasure to remove the insurance commissioner from his office created by said chapter, is not repugnant to Const. Art. 16, §§ 3, 4, since these sections apply only to the officers named in the Constitution.

State ex rel. Ayres v. Kipp, 10 S. D., 495. 74 N. W. 440.

§ 4. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by law.

POWER OF GOVERNOR TO REMOVE REGENT OF EDUCATION.

1. Chapter 124, Laws 1887, being section 117 et seq., Comp. Laws, and known as the "Public Examiners' Act," providing that upon the filing of a

report of his examination, as required by said law, with the governor, he, the governor, "may cause the results of such examination to be published or at his discretion, to take such action for the public security as the exigency may demand; and if he should deem the public interests to require, he may suspend any such officer from further performance of duty until an examination be had, or such security obtained as may be demanded for the prompt protection of the public funds,"—was not intended to, and does not, authorize the governor to remove from office any officer so made the subject of the examiner's report.

2. Even if such law were originally intended to authorize the governor to so remove from office at his discretion, the law in that respect and to that extent is inconsistent with, and therefore abrogated by, section 4, Art. 16, of the state Constitution. Fuller, J., dissenting.

State ex rel. Holmes, State's Atty., v. Shannon. 7 S. D., 319. 64 N. W. 175.

SAME.

The Constitution, section 4, art. 16, having specified the causes for which such trustees may be removed, section 5, c. 6, Laws 1890, authorizing the board of regents to remove trustees for "sufficient cause," must be understood to mean by "sufficient cause" one or more of the causes so enumerated in the constitutional provision referred to.

State ex rel. Hitchcock v. Hewitt et al, 3 S. D., 187. 52 N. W. 875.

§ 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 6. On trial of an impeachment against the governor the lieutenant governor shall not act as a member of the court.

§ 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

§ 8. No person shall be liable to impeachment twice for the same offense.

ARTICLE XVII.

CORPORATIONS.

§ 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state; but the legislature shall provide, by general laws for the organization of all corporations hereafter to be created.

§ 2. All existing charters, or grants of special or exclusive privileges under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

§ 3. The legislature shall not remit the forfeiture of the charter of any corporation now existing nor alter or amend the same nor pass any other general or special law for the benefit of such corporation; except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

§ 4. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.

§ 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

§ 6. No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

CORPORATIONS—CONTRACTS—ACTIONS AGAINST.

Article 17, § 6, of the Constitution, and sections 3190, 3192, Comp. Laws, were not designed or intended as a prohibition upon foreign corporations to make lawful contracts in this state to the extent to declare such contracts void, but were merely intended to furnish the means by which citizens could procure personal judgments against them, and bring them and their property within the reach of the process and jurisdiction of our courts; thus protecting them from fraud and imposition, and affording adequate and speedy relief against either.

4 S. D., 237. N. W. 51-707. See also Wright v. Lee. 55 N. W. 931, (rehearing.)

§ 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

CORPORATION—POWER TO TAX REAL ESTATE.

A corporation organized for the purpose, among others stated, of buying and selling personal property, is to that extent at least organized for a legal purpose, and may, under Section 7, Art, 17 of the Constitution, take and hold such real estate as may "be necessary and proper for its legitimate business;" and, under the rule first above announced, whether such corporation has taken the title to lands described for a purpose other than that allowed by the Constitution is a matter between the government of the state and the corporation.

Gilbert v. Hole, 2 S. D., 164. 49 N. W. 1. State ex rel., Gilbert v. Union Investment Co., et al. 7 S. D., 51 63 N. W. 232. Adams & Wesaker Co., v. Deyette et al. (See dissenting opinion.) 8 S. D., 131. 65 N. W. 471.

§ 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days' notice given in pursuance of law.

CORPORATIONS — ACTION AGAINST — PREJUDICED JUROR — VALIDITY.

1. Rev. Code, Civ. Pro. sec. 252, declares that interest on the part of a juror in the event of the action or in the main question involved, disqualifies said juror. It is held that where plaintiff sued C. and certain corporations for breach of a contract to deliver to plaintiff certain stock in the corporations for services rendered to C. and it did not appear at the time the jury was examined that the action involved any question relating to the unlawful issue of stock, or that certain challenged jurors, who admitted they owned stock in mining companies which had been given them, were owners of any stock illegally issued, they were not disqualified by interest by such admission.

2. A contract by certain mining corporations to issue to plaintiff certain of their stock in payment for services rendered to C. individually, in aiding him to dispose of the stock of the corporations and in making assays, was illegal under Const. art. 17, § 8.

Rogers v. Gladiator Gold Mine v. Mill Co., 21 S. D., 412. 115 N. W. 87.

§ 9. The Legislature shall have the power to alter, revise or annul, any charter of any corporation now existing and revokable at the taking effect of this Constitution, or any that may be created, whenever in their opinion it may be injurious to the citizens of this state, in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

§ 10. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town or incorporated

village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

§ 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph in this state and to connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise, any other competing line of telegraph.

See Kirby v. Western Union Tel. Co., 55 N. W. 759.

§ 12. Every railroad corporation organized or doing business in this state under the laws or authority thereof shall have and maintain a public office or place in this state for the transaction of its business, where transfers of its stock shall be made, and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities; and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

§ 13. The rolling stock, and all other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no laws exempting such property from execution and sale.

§ 14. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given out, at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

§ 15. Railways heretofore constructed or that may hereafter be constructed, in this state are hereby declared public highways, and all railroad and transportation companies are declared to be common carriers and subject to Legislative control; and the Legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight as such common carriers from one point to another in this state.

§ 16. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 17. The Legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

§ 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed, by the construction or en-

largement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporation or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury as in other civil cases.

HIGHWAYS—ASSESSMENT OF DAMAGES—JURY TRIAL.

1. The provisions of section 1302, Comp. Laws, imposing upon township supervisors the duty of assessing the damage sustained by the owner of land by reason of the laying out, altering, or discontinuing any road,—the right to an appeal and a jury trial being given to the party who feels aggrieved by any such determination or award of damages made by such supervisors (section 1324. Comp. Laws)—are not in conflict with the provisions of section 13, Art. 6, of the state Constitution.

2. The purpose of the provisions of the Constitution evidently is to secure, to a party whose property is taken or damaged for public use, the right to a jury trial upon the question of damages, and that right is secured by giving to the party whose land is so taken or damaged the right to an appeal to a court in which such a jury trial may be had.

3. The term "municipal corporation," as used in chapter 94, Laws 1891, does not include townships organized under the laws of this state.

4. The term "other corporation" does not include townships organized under the laws of this state.

5. Chapter 94, Laws 1891, was designed to affect "municipal" and "other corporations" referred to in section 18, Art. 17 of the Constitution only and has no application to quasi corporations organized under the laws of this state for political and governmental purposes.

Town of Dell Rapids v. Irving. 7 S. D., 310. 64 N. W. 149. See Art. 6, Sec. 13.

§ 19. The term "corporations" as used in this Article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 20. Monopolies and trusts shall never be allowed in this State and no incorporated company, co-partnership or association of persons in this State shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any co-partnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The Legislature shall pass laws for the enforcement of this section by adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare a forfeiture of their franchises.

NOTE—This section (20) was submitted as an amendment to the Constitution, by the legislature in 1895, and was adopted by a popular vote of the electors of the state at the general election in 1896, by the following vote, for 36,763, against 9,136.

ARTICLE XVIII.

BANKING AND CURRENCY.

§ 1. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of this state of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in the approved securities of the State or the United States, to be rated at ten per centum below their par value, and in case of their depreciation the deficiency shall be made good by depositing additional securities.

§ 2. Every bank, banking company or corporation shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business, but shall have corporate capacity to sue or be sued until its business is fully closed, but the Legislature may provide by general law for the reorganization of such banks.

§ 3. The shareholders or stockholders of any banking corporation shall be held individually responsible and liable for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein; at the par value thereof, in addition to the amount invested in such shares or stock; and such individual liabilities shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

BANKING—STOCKHOLDER—LIABILITY—SUIT BY CREDITOR.

A stockholder of an insolvent South Dakota bank is individually liable to a creditor of the bank up to the par value of his shares, notwithstanding Civ. Code sec. 864, providing that the shareholders of every banking association organized under the laws of South Dakota shall be individually responsible equally and ratably, and not one for the other for all contracts, debts and engagements of the association; since the constitutional provision is self-executing, the statute must be construed in accordance therewith.

A creditor may sue a stockholder on a judgment recovered against an insolvent banking association.

Union Nat. Bank of Omaha v. Halley et al. 19 S. D. 474. 104 N. W. 213.

ARTICLE XIX.

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

§ 1. Until otherwise provided by law, the members of the Houes of Representatives of the United States, apportioned to this state, shall be elected by the state at large.

§ 2. Until otherwise provided by law, the Senatorial and Representative districts shall be formed, and the Senators and Representatives shall be apportioned as follows:

DISTRICTS.

NOTE—The present apportionment as fixed by chapter 13, Laws of 1907, has been omitted from this Constitution.

ARTICLE XX.

SEAT OF GOVERNMENT.

§ 1. The question of the location of the temporary seat of government shall be submitted to a vote of the electors of the proposed State of South Dakota in the same manner and at the same election at which this Constitution shall be submitted, and the place receiving the highest number of votes shall be the temporary seat of government until a permanent seat of government shall be established as hereinafter provided.

§ 2. The legislature at its first session after the admission of this state, shall provide for the submission of the question of a place for a permanent seat of government to the qualified voters of the state at the next general election thereafter, and that place which receives a majority of all the votes cast upon that question shall be the permanent seat of government.

§ 3. Should no place voted for at said election have a majority of all votes cast upon this question, the governor shall issue his proclamation for an election to be held in the same manner at the next general election to choose between the two places having received the highest number of votes cast at the first election on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving the majority of all votes cast upon this question shall be the permanent seat of government.

EVIDENCE—JUDICIAL NOTICE—INDIAN RESERVATIONS—TITLE—JURISDICTION STATE COURTS.

The Supreme Court will take judicial notice that by treaty stipulations certain territory within the state has been set apart as a reservation for Indians, and that the reservation has not been subdivided or allotted to the Indians in severalty, but that it belongs to them as a tribe.

2. Under the provisions of the act admitting the state into the Union that the state should disclaim the right and the title to lands within the state held by any Indian tribes, and that until the title shall have been extinguished by the United States the same shall remain subject to the jurisdiction and control of congress, and Const. art. 22, by which the state on its part entered into the required compact with the United States, the state courts are precluded from exercising jurisdiction in actions involving the possession or right to possession of Indian reservation lands, such as an action of trespass brought by a tribal Indian against an Indian agent to recover damages for the latter's act in destroying fences erected by the former on land within the reservation.

Peano v. Brennan. 20 S. D., 342. 106 N. W. 409.

ARTICLE XXI.

MISCELLANEOUS.

§ 1. Seal and Coat of Arms.] The design of the great seal of South Dakota shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other features of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steamboat. Properly divided between the upper and lower edges of the circle shall appear the legend, "Under God the People Rule" which shall be the motto of the State of South Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part, the words, "State of South Dakota," in the lower part the words, "Great Seal," and the date in Arabic numerals of the year in which the State shall be admitted to the Union.

NOTE—For description of State Flag see Laws 1909. Chap. 230, p. 361.

COMPENSATION OF PUBLIC OFFICERS.

§ 2. The Governor shall receive an annual salary of two thousand five hundred dollars; the Judges of the Supreme Court shall each receive an annual salary of two thousand five hundred dollars; the Judges of the Circuit Court shall each receive an annual salary of two thousand dollars; Provided, that the Legislature may, after the year one thousand eight hundred and ninety, increase the annual salary of the Governor and each of the Judges of the Supreme Court to three thousand dollars, and the annual salary of each of the Circuit Court Judges to two thousand five hundred dollars. The Secretary of State, State Treasurer and State Auditor shall each receive an annual salary of one thousand and eight hundred dollars; the Commissioner of School and Public Lands shall receive an annual salary of one thousand eight hundred dollars; the Superintendent of Public Instruction shall receive an annual salary of one thousand and eight hundred dollars; the Attorney General shall receive an annual salary of one thousand dollars; the compensation of the Lieutenant Governor shall be double the compensation of the State Senator. They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the legislature to increase the salaries of the officers named in this article except as herein provided.

NOTE—By the provisions of Chap. 110, Laws of 1901, approved Feb. 1, 1901, the salaries of the Governor and Judges of the Supreme and Circuit Courts were increased as contemplated by the above section.

State vs. Roddle, 12 S. D., 433. See 81. N. W. 90 also Art. 4, Sec. 13.

JUDGES—SALARIES.

Laws, 1901, c. 110, provides that the governor and each judge of the supreme court shall receive an annual salary of $3,000, and the several circuit judges an annual salary of $2,500;" provided, however, that in any circuit containing less than five thousand square miles and a population of less than fifty-four thousand the judge thereof shall receive an annual salary of two thousand dollars. Held, that the provision to the act of 1910 was unauthorized.

2. The invalidity of the proviso did not impair the balance of the act.

Bennett v. State, 16 S. D., 417. 93 N. W., 643.

§ 3. Oath of Office.] Every person elected or appointed to any office in this state, except inferior offices as may be by law exempted, shall before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this State, and faithfully to discharge the duties of his office.

§ 4. Exemptions.] The right of the debtor to enjoy the comforts and necessaries of life shall be recognized by wholesome laws exempting from forced sales a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general laws.

VACATING JUDGMENT — EXEMPTIONS — CONSTITUTIONAL LAW — DEBT INCURRED BY FRAUD.

Section 4, Art. 21, did not repeal or supersede section 5139. Comp. Laws refusing the right to additional exemptions as against a debt incurred for property obtained under false pretenses, or to contracts made prior to the adoption of the Constitution.

Sundback v. Griffith. 8 S. D., 359. 63 N. W. 544.

HOMESTEAD—MECHANICS' LIENS.

Comp. Laws. Secs. 5126, 5127, before the amendment of 1890, provided that there should be absolutely exempt from forced sale (7) "the homestead as created, defined and limited by law." Sec. 2452 provided that the homestead should be subject to mechanics' liens. Laws 1890, Chap. 86, amending Sec. 5127, substituted for subdivision 5 a statement of what should constitute a homestead, and made no exceptions to its exemption, Held, in view of the fact that in 1893 the legislature submitted to popular vote a proposition to subject homesteads to mechanics' liens, which was rejected, that the homestead defined by Laws 1890, Chap. 86, was not subject to such liens.

Fallihee v. Wittmayer et al, 9 S. D., 479. 70 N. W. 642.

HOMESTEAD—EXEMPTION.

Chapter 86 of the Laws of 1890, by express terms absolutely exempts the homestead therein defined and limited from all process, levy, or sale. In Fallihee v. Whittmayer, 9 S. D., 479, 60 N. W. 642, it was decided that by this act mechanics and material men were deprived of the right to a lien against the homestead, and in the performance of the duty enjoined by Section 4 of Article 21 of the Constitution, requiring the enactment of a wholesome law defining, limiting, and exempting the homestead from forced sale, it seems very clear from the language employed that the legislature of 1890 intended to bestow upon every owner of a homstead absolute immunity from a sale thereof in satisfaction of debts, even though contracted for the purchase price. The mortgagor being the fee-simple owner of the premises impressed with the character of a homestead, and the mortgagee's interest no more than a lien in the nature of a chattel, there can be no hypothecation unless the purported mortgage was concurred in and signed by both the husband and wife. Comp. Laws, § 2451, as amended by Chapters 76, 77, Laws 1891.

Northwestern Loan & Banking Co. v. Jonasen et al, 11 S. D., 566. 79 N. W. 840.

HOMESTEAD—SALE—FORCED SALE.

1. The sale of a homestead under a power of sale contained in a mortgage is not a forced sale, within the meaning of Const. Art. 21, § 4 exempting homesteads from forced sales.

Karcher v. Gans, 13 S. D., 383. 83, N. W. 431.

§ 5. Rights of Married Women.] The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

§ 6. The drainage of argicultural lands is hereby declared to be a public purpose and the legislature may provide therefor, and may provide for the organization of drainage districts for the drainage of land for any public use, and may vest the corporate authorities thereof, and the corporate authorities of counties, townships and municipalities, with the power to construct levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state, by special assessments upon the property benefitted thereby, according to benefits received.

This section (6) was submitted as an amendment to the constitution by the legislature of 1905, and was adopted by the popular vote of the electors at the general election of 1906, by the following vote: For, 31,151; against, 18,799.

ARTICLE XXII.

COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of the State of South Dakota expressed by their Legislative Assembly:

First, That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second, That we, the people inhabiting the State of South Dakota, do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundary of South Dakota, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents of this State; that no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed any lands, owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress contaiming a provision exempting the lands thus granted from taxation. All such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent, and as prescribed by such act of Congress.

Third, That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided in this Constitution.

Fourth, That provisions shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of this State, and free from sectarian control.

INDIAN RESERVATIONS.

The Supreme Court will take judicial notice that by treaty stipulations certain territory within the state has been set apart as a reservation for Indians, and that the reservation has not been subdivided or allotted to the Indians in severalty, but that it belongs to them as a tribe.

Under the provisions of the act admitting the state into the Union that the state should disclaim the right and title to lands within the state held by any Indian tribes, and that until the title shall have been extinguished by the United States, the same shall remain subject to the jurisdiction and control of congress, and Const., Art. 22, by which the state on its part entered into the required compact with the United States, the state courts are precluded from exercising jurisdiction in actions involving the possession or right to possession of Indian reservation lands, such as an action of trespass brought by a tribal Indian against an agent to recover damages for the latter's act in destroying fences erected by the former on land within the reservation.

Peano v. Brennan, 20 S. D. 342. 106 N. W. 409.

ARTICLE XXIII.

AMENDMENTS AND REVISIONS OF THE CONSTITUTION.

§ 1. Any amendment or amendments to this Constitution may be proposed in either House of the Legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the vote of the people at the next general election. And if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this Constitution; Provided, that the amendment or amendments so proposed shall be published for a period of twelve weeks previous to the date of said election, in such manner as the Legislature may provide; and Provided, further, That if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

AMENDMENTS—SEPARATE SUBMISSION.

The object of this original action is to ascertain whether certain persons joined with the state as plaintiffs, or the defendants, have authority to control the various educational institutions of this state. The authority of the former is derived from appointments under Chap. 6, Laws 1890; that of the latter, from appointments under an act of the legislature approved March 5, 1897. The final determination of the controversy will evidently involve the validity of proceedings taken to amend the Constitution. The action of the legislature is shown by a joint resolution published as Chap. 36, Laws 1895. Counsel for plaintiffs contend that the changes therein proposed have not become part of the Constitution, for the following reasons: (1) Such amendment was not entered upon the journal of the house of representatives; (2) it was not printed upon each ticket on the ballots cast at the next general election; (3) it was not submitted by the legislature to the vote of the people; (4) the title of the resolution does not truly express its subject; and (5) the amendment was not published as required by law. A copy of the official ballot is attached to the complaint, from which it appears that the contemplated changes were submitted in such manner that the electors could not vote for or against each one separately. The Constitution provides that "if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately." Const. Art. 23, Sec. 1. Although the apparent disregard of this meritorious and mandatory requirements is not specified in the complaint, it will be the duty of the court to consider it upon the final determination of this action. Then the ques-

tion—of law—will be whether the alleged amendment or amendments constitutes a part of the Constitution. The answer to such question cannot be controlled alone by a consideration of the objections specified in the complaint or mentioned in argument. The rule is elementary that a party should not plead the law of the forum, and that the courts of any state must take judicial notice of the contents of its Constitution.

State ex rel. Adams, State's Atty. et al. v. Herried et al. 71 N. W. 319. Appealed 10 S. D. 120. 72 N. W. 93.

1. A proposition for an amendment to the Constitution, entered in full upon the journal of the senate, and by title only upon the journal of the house is entered upon the journals of the two houses, within the meaning of Const. Art. 23, Sec. 1, providing that a "proposed amendment or amendments shall be entered on their journals."

2. A proposed constitutional amendment may become a law, though it is not printed upon each ticket upon the ballots voted in the general election.

3. A proposed constitutional amendment may become a law though the legislature made no joint resolution formally declaring that it should be submitted to the people.

4. A proposed amendment to the Constitution, by one section changed the number of regents of the state educational institutions, and by two other sections, abolished the trustees of such institutions. These sections were submitted to the people in such a way that each elector was compelled to vote for or against all the proposed changes. Held, that this did not violate Const. Art. 23, Sec. 1, requiring the submission of more than one amendment in such a way that they may be voted on separately as the single object of the amendment was to place said institutions under the control of a single board, and provisions incidental thereto would not constitute additional amendments.

5. The amendment of 1896 to Const. Art. 14, Secs. 3, 4, decreasing the number of a board of regents of education and increasing their powers, is authority for the creation of a new board agreeably to the Constitution as amended, though the terms for which the members of the old board had been appointed had not expired.

State ex rel. Adams, State's Atty. et al., v. Herried et al. 19 S. D., 109. 72 N. W. 93.

§ 2. Whenever two-thirds of the members elected to each branch of the Legislature shall think it necessary to call a convention to revise this Constitution they shall recommend to the electors to vote at the next election for members of the Legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the Legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the House of Representatives of the Legislature, and shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE XXIV.

PROHIBITION.

NOTE—Article 24 of the Constitution was adopted at the time of the adoption of the Constitution, October 1, 1889, it being voted upon separately, by the following vote: For, 40,234; against, 34,510. The legislature in 1895 submitted an amendment for the repeal of this article (24), which was adopted by a popular vote of the electors at the general election in 1896, by a vote of 31,901 for, and 24,910 against.

ARTICLE XXV.

Article 24 of the Constitution declares a policy single in its ultimate purpose, and object, but a law for its enforcement must necessarily, and therefore may legally, include the employment of many measures and the attainment of many ends, not as independent objects or subjects of legislation, but as auxilliary to the final purpose sought.

State v. Becker, 3 S. D., 29. 51 N. W. 1018.

MINORITY REPRESENTATION.

NOTE—Article 25 of the Constitution, was submitted to a separate vote, at the time of the adoption of the Constitution, October 1st, 1889, and was rejected by a vote of 24,161 for, and 46,200 against.

ARTICLE XXVI.

SCHEDULE AND ORDINANCE.

NOTE—As the provisions of this article (26), with the exception of Sections 17 and 18 thereof, have become obsolete, or fully executed, they have been omitted from this compilation.

COURT—ABOLITION BY ADOPTION OF CONSTITUTION—JURISDICTION OF NEW COURT.

1. Where an equitable action was commenced in a territorial district court, and the evidence taken before such court, but before a decision was made the district court became extinct by reason of the admission of the State of South Dakota, it was not error for the judge of the circuit court which succeeded said district court, he having been the judge of such district court at the time of its extinction, and the judge who partially tried the case, to decide the same upon the evidence taken before him as such district judge.

2. In such case it was competent and proper for the circuit court, under Section 1, Art. 26, of the state Constitution, to take up the case at the point where the district court left it, and proceed to a final determination as nearly as possible "as if no change had taken place in this government."

Smith v. Tosini et ux., 1 S. D., 632. 48 N. W. 299.

CLERK OF CIRCUIT COURT—APPOINTMENT—MANDAMUS.

1. The office of clerk of the district court was abolished by the Constitution, upon the admission of South Dakota as a state.

2. The office of clerk of the circuit court is a new office created by the Constitution.

3. The incumbent of the old office of clerk of the district court, at the time of the admission of the state, did not become the clerk of the circuit court, by virtue of section 4, Art. 26, of the Constitution, for that section only provided that certain officers should continue to hold and exercise their respective offices until superseded under the Constitution; and, the office of clerk of the district court being abolished, its former incumbent could not continue to hold and exercise it.

Driscoll v. Jones. 1 S. D., 8. 44 N. W. 726.

§ 17. The Ordinances and Schedule enacted by this Convention shall be held to be valid for all the purposes thereof.

§ 18. That we, the people of the State of South Dakota, do ordain:

First: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Second: That we, the people inhabiting the State of South Dakota, do agree and declare, that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State, shall never be taxed at a hgher rate than the lands belonging to residents of this State. That no taxes shall be imposed by the State of South Dakota

on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant save and except such lands as have been, or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, all such lands which may have been exempted by any grant or law of the United States, shall remain exempt to the extent, and as prescribed by such act of congress.

Third: That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided in this Constitution.

Fourth: That provisions shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of this State, and free from sectarian control.

Fifth: That Jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall, and Fort Sully, heretofore declared by the President of the United States; Provided legal process, civil and criminal, of this state shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States, and also the people of the said State of South Dakota, expressed by their Legislative Assembly.

INDIAN RESERVATION—RESIDENCE ON—VOTING.

A person, though not in the army or navy, cannot, by long and continuous residence within the boundaries of a reservation, the jurisdiction whereof is ceded to the United States (Const. Art. 26, § 18), acquire the right to vote at a state election held in the county wherein such reservation is situated.

McMahon v. Polk, 10 S. D., 296. 73 N. W. 77. See also Collins v State. 3 S. D. 18. 51 N. W. 776.

ARTICLE XXVII

STATE CONTROL OF MANUFACTURE AND SALE OF LIQUOR.

NOTE—Article 27 of the Constitution, providing that the manufacture and sale of liquor, should be under exclusive state control, was submitted by the legislature in 1897, and adopted by a vote of the people, at the general election in 1898, by a vote of 22,170 for, and 20,557 against. The legislature in 1899 submitted an amendment repealing Article 27, and at the general election held in 1900 the amendment was adopted by a vote of 48,673 for and 33,927 against.

See State v. Tophy. 14 S. D. 119.

ARTICLE XXVIII.

§ 1. The several counties of the State shall invest the moneys of the permanent school and endowment funds in bonds of school corporation, state, county and municipal bonds or in first mortgages upon good improved farm lands within their limits respectively; under such regulations as the legislature may provide, but no farm loan shall exceed one thousand dollars to any one person, firm or corporation.

NOTE—Article 28 was proposed by the legislature in 1899 as an amendment to the Constitution, and was at the general election held in November, 1909, adopted by a popular vote of 49,989 for, and 15,653 against.

Table of Cases Cited in the Constitution

Adams & Westlake Co. v. Deyette, et al, 8 S. D. 132; 65 N. W. 471.
Adkins v. Lien et al, County Commissioners, 10 S. D. 436; 73 N. W. 909.
Alblen v. Smith, 19 S. D. 421; 103 N. W. 655.
Aldrich et al, v. Collins, Supervisor, et al, 3 S. D. 154; 52 N. W. 854.
Allibone, Treasurer, v. Ames et al, 9 S. D. 74; 68 N. W. 165.
Assessment and Collection of Taxes, 4 S. D. 6, 20; 54 N. W. 818, 832.
Batterton v. Fuller 6 S. D. 268; 60 N. W. 1071.
Benedict v. Johnson, 4 S. D. 388; 57 N. W. 66.
Bennett v. State, 16 S. D. 417; 93 N. W. 642.
Belatti v. Pierce, Police Justice, 8 S. D. 456; 66 N. W. 1088.
B. H. F. & M. Co. v. G. D. & W. C. R. Co., 2 S. D. 546; 51 N. W. 342.
Bonds, See In re, State Bonds.
Bon Homme County v. Berndt et al, 13 S. D. 309; 83 N. W. 333.
Boucher v. Clark Pub. Co., 14 S. D. 72; 84 N. W. 237.
Brooke v. Eastman, Commissioner, 17 S. D. 339; 96 N. W. 699.
Carter v. Thorson, 5 S. D. 474; 59 N. W. 469.
Chamberlain v. Wood, et al, 15 S. D. 216; 88 N. W. 109.
Church v. Walker, 10 S. D. 96; 72 N. W. 101; 74 N. W. 198.
City of Deadwood v. Allen, 9 S. D. 221; 68 N. W. 333.
City of Huron v. Campbell, Circuit Judge, 3 S. D. 309; 53 N. W. 182.
Collins v. State, 3 S. D. 18; 51 N. W. 776.
Constitution, construction of, 3 S. D. 548; 54 N. W. 650.
Cutting, City Treasurer v. Taylor, State Auditor, 3 S. D. 11; 51 N. W. 949.
Davenport v. Elrod, et al, Capitol Commissioners, 20 S. D. 567; 107 N. W. 833.
Driscoll v. Jones, 1 S. D. 8; 44 N. W. 726.
Duncan v. Newcomer, 9 S. D. 375; 69 N. W. 580.
Dupree v. Stanley County, 8 S. D. 30; 65 N. W. 426.
Ex parte Hawley, 22 S. D. ——; 115 N. W. 93.
Fallihee v. Wittmayer et al, 9 S. D. 479; 70 N. W. 642.
Freemont, E. & M. V. R. Co. v. Pennington County, et al, 20 S. D. 270; 116 N. W. 75.
Garrigan v. Kennedy et al, 19 S. D. 11; 101 N. W. 1081.
Gilbert v. Hole, 2 S. D. 164; 49 N. W. 1.
Harris v. Stearns, County Treasurer, 17 S. D. 439; 97 N. W. 361.
Hauser v. Seeley, et al, 18 S. D. 308; 100 N. W. 437.
Hawley, ex parte, 22 S. D. ——; 115 N. W. 93.
Healey et al, v. Wipf, Secretary of State, 22 S. D. ——; 117 N. W. 521.
Henderson v Hughes County et al, 13 S. D. 576; 83 N. W. 682.
Heston v. Mayhew, State Auditor, 9 S. D. 501; 70 N. W. 635.
Heyler v. City of Watertown, 16 S. D. 27; 91 N. W. 334.
Holden v. Haseradt, et al, 3 S. D. 4; 51 N. W. 340.
House Resolution, 10 S. D. 249; 72 N. W. 892.
Howard v. Burns, et al, 14 S. D. 384; 85 N. W. 920.
Howard v. City of Huron, et al, 6 S. D. 180; 60 N. W. 803.
In re Assessment and Collection of Taxes, 4 S. D. 6, 20; 54 N. W. 818, 832.
Chapter 6, Session Laws of 1890, 8 S. D. 274; 66 N. W. 310.
Construction of Constitution, 3 S. D. 548; 54 N. W. 650.
Construction of Revenue Law, 2 S. D. 58; 48 N. W. 813.
House Resolution No. 30, 10 S. D. 249; 72 N. W. 892.
Limitation of Taxation, 3 S. D. 456; 54 N. W. 417.
McClellan's Estate, 20 S. D. 498; 107 N. W. 681.
Nelson, 19 S. D. 215; 102 N. W. 885.
Opinion of Judges, 13 S. D. 191; 83 N. W. 96.
State Bonds, 7 S. D. 42; 63 N. W. 223.
State Census, 6 S. D. 540; 62 N. W. 129.
State Warrants, 5 S. D. 518; 62 N. W. 101.
Tabor, 13 S. D. 67; 82 N. W. 398.
Watson, 17 S. D. 486; 97 N. W. 463.

Jamieson v. Wiggin, 12 S. D. 16; 80 N. W. 137.
Jewell Nursery Co. v. State, 3 S. D. 11; 51 N. W. 949.
Karcher v. Gans, 13 S. D. 383; 83 N. W. 431.
Kirby v. Citizens' Tel. Co. of Sioux Falls, 17 S. D. 362; 97 N. W. 3.
Limitation of Taxation, 3 S. D. 456; 54 N. W. 417.
Long v. Collins, Sheriff, et al, 12 S. D. 621; 82 N. W. 95.
Lovett v. Ferguson, 10 S. D. 44; 71 N. W. 765.
Mannie et al, v. Hatfield, Police Magistrate, 22 S. D. ——; 118 N. W. 817.
McClain v. Williams, 10 S. D. 332, 11 S. D. 60; 73 N. W. 72, 75 N. W. 391.
McClellan's Estate, 20 S. D. 498; 107 N. W. 681.
McMahon v. Polk, 10 S. D. 296; 73 N. W. 77.
Meek v. Meade County, 12 S. D. 165; 80 N. W. 182.
Miles v. Benton Township, et al, 11 S. D. 450; 78 N. W. 1004.
Minnehaha County v. Thorne, 6. S. D. 449; 61 N. W. 688.
Missouri River Telephone Co. v. City of Mitchell, 22 S. D. ——; 116 N. W. 67.
Morrow v. Wipf, 22 S. D. ——; 115 N. W. 1122.
Morgan v. State, 9 S. D. 230; 68 N. W. 538.
Myers v. Longstaff, 14 S. D. 98; 84 N. W. 234.
Narregang v. Brown County et al, 14 S. D. 357; 85 N. W. 602.
Nelson v. Ladd, 4 S. D. 1; 54 N. W. 809.
Nelson, See In re Nelson.
Northwestern Loan & Banking Co. v. Jonasen et al, 11 S. D. 566; 79 N. W. 840.
Opinion of Judges, 13 S. D. 191; 83 N. W. 96.
Palmer v. Schurz, 22 S. D. ——; 117 N. W. 150.
Palmer v. State, 11 S. D. 78; 75 N. W. 818.
Peano v. Brennan, 20 S. D. 342; 106 N. W. 409.
Phenix Ins. Co. of Brooklyn, N. Y., et al, v. Perkins, Commissioner of Insurance, 19 S. D. 59; 101 N. W. 1110.
Remington v. Higgins, 6 S. D. 313; 60 N. W. 73.
Revenue Law, 2 S. D. 58; 48 N. W. 813.
Rogers v. Gladiator Gold Min. & Mill Co., 21 S. D. 412; 115 N. W. 87.
Ross v. Ward, 14 S. D. 240; 85 N. W. 182.
Schuler et al, v. Board of Supervisors, 12 S. D. 466; 81 N. W. 890.
Searle v. City of Lead, 10 S. D. 312; 73 N. W. 101.
Shannon et al, v. City of Huron, 9 S. D. 356; 69 N. W. 598.
Session Laws, 1890 C. 6, 8 S. D. 274; 66 N. W. 310.
Skinner v. Holt et al, 9 S. D. 427; 69 N. W. 595.
Smith v. Tosini et ux. 1 S. D. 632; 48 N. W. 209.
Somers v. State 5 S. D. 321, 584; 58 N. W. 804, 59 N. W. 962.
Stanton v. State, 5 S. D. 515; 59 N. W. 738.
State v. Adams, 11 S. D. 431; 78 N. W. 353.
Ayers, 8 S. D. 516; 67 N. W. 611.
Becker, 3 S. D. 29; 51 N. W. 1019.
Bonds, See In re State Bonds.
Burchard, 4 S. D. 448; 57 N. W. 491.
Census, See In re State Census.
Finder, 10 S. D. 103; 72 N. W. 97.
Heffernan, et al, 22 S. D. ——; 118 N. W. 1027.
Kauffman, 20 S. D. 620; 108 N. W. 246.
Lamphere, 20 S. D. 98; 104 N. W. 1038.
Matejousky, 22 S. D. ——; 115 N. W. 96.
Mellette, 16 S. D. 298; 92 N. W. 395.
Mitchell, 3 S. D. 223; 52 N. W. 1050.
Morgan, 2 S. D. 32; 48 N. W. 314.
Reddington, 8 S. D. 315; 66 N. W. 465.
Roddle, 12 S. D. 433; 81 N. W. 980.
Ruth, 9 S. D. 91; 68 N. W. 189.
Scott, 7 S. D. 619; 65 N. W. 31.
Scougal, 3 S. D. 55; 51 N. W. 858.
Thompson, 4 S. D. 95; 55 N. W. 725.
Vey, 21 S. D. 612; 114 N. W. 719.
Walker, 9 S. D. 438; 69 N. W. 586.
Wilcox, 22 S. D. ——; 115 N. W. 687.
Williams, 20 S. D. 492; 107 N. W. 830.
Wright, 15 S. D. 628; 91 N. W. 311.
State ex rel. Adams, State's Att'y, et al, v. Herried, et al, 10 S. D. 16, 10 S. D. 109; 72 N. W. 93.
Adkins v. Lien, et al, 9 S. D. 297; 68 N. W. 748.
Andrews v. Borden et al, County Commissioners et al, 18 S. D. 388; 100 N. W. 763, 108 N. W. 897.
Ayres v. Kipp, 10 S. D. 495; 74 N. W. 440.
City of Huron v. Campbell, 7 S. D. 572; 64 N. W. 1125.
Cosper v. Porter, et al, 13 S. D. 126; 82 N. W. 415.
Cranmer v. Thorson, 9 S. D. 152-154; 68 N. W. 202.
Dollard, Attorney General, v. Board County Commissioners Hughes County et al, 1 S. D. 292; 46 N. W. 1127.
Gilbert, v. Union Investment Co. et al, 7 S. D. 51; 63 N. W. 232.
Grigsby, Att'y Gen. v. Buechler, County Treasurer, 10 S. D. 156; 72 N. W. 114.

Hayes, State's Att'y. v. Board of Equalization for Lawrence County, et al, 16 S. D. 219; 92 N. W. 16.
Hitchcock v. Hewett et al, Board of Regents of Education, 3 S. D. 187; 52 N. W. 875.
Holmes, State's Att'y. v. Finnerud, 7 S. D. 237, 319; 64 N. W. 121, 175.
Holmes, State's Att'y. v. Finnerud, 7 S. D. 237; 64 N. W. 121, 175.
Kotillnic v. Swenson, 18 S. D. 202; 99 N. W. 1114.
Lavin et al, v. Bacon et al, 14 S. D. 284; 85 N. W. 225.
Lavin et al, v. Bacon et al, 14 S. D. 394; 85 N. W. 605.
Long et al, v. Rexford, County Auditor, 21 S. D. 86; 109 N. W. 216.
McGee v. Gardner, 3 S. D. 553; 54 N. W. 606.
Simons v. Nyquist, et al, 22 S. D. ———; 116 N. W. 754.
Wood v. Sheldon, 8 S. D. 525; 67 N. W. 613.
Stuart et al, v. Kirley et al, 12 S. D. 246; 81 N. W. 147.
Sundback v. Griffith, 7 S. D. 109; 63 N. W. 544.
Synod of Dakota v. State, 2 S. D. 366; 50 N. W. 632.
Taber, in re, 13 S. D. 67; 82 N. W. 398.
Thomas et al, v. State, 17 S. D. 579; 97 N. W. 1011.
Town of Dell Rapids v. Irving, 7 S. D. 310; 64 N. W. 149.
Tripp v. City of Yankton, 10 S. D. 516; 74 N. W. 447.
Turner v. Hand County, 11 S. D. 348; 77 N. W. 589.
Union Nat. Bank of Omaha v. Hailey et al, 19 S. D. 474; 104 N. W. 213.
VanDusen et al, v. State, 11 S. D. 318; 77 N. W. 201.
Vine et al, v. Jones, Judge, et al, 13 S. D. 54; 82 N. W. 82.
Walling v. Lummis, 16 S. D. 350; 92 N. W. 1063.
Watson in re, 17 S. D. 486; 97 N. W. 463.
Wells v. City of Sioux Falls et al, 16 S. D. 547; 94 N. W. 425.
Western Town Lot Co. v. Lane, 7 S. D. 604; 65 N. W. 17.
Western Town Lot v. Lane, 7 S. D. 5; 62 N. W. 982.
Whittaker v. City of Deadwood, et al, 12 S. D. 608; 82 N. W. 202.
Williamson v. Aldrich et al, 21 S. D. 13; 108 N. W. 1063.
Wilson v. Board of Education, 12 S. D. 536; 81 N. W. 952.
Wright v. Lee, 4 S. D. 237; 51 N. W. 707.

INDEX TO CONSTITUTION

	Art.	Sec	Page
ACTION			
county court—subject matter—parties—waiver—transfer—motion to dismiss	5	20	18
for fees	5	16	17
married woman's rights—intoxicating liquors	3	21	8
removal of	6	7	27
state—subsistence furnished state troops	11	9	45
ACTS			
effective ninety days after adjournment of legislature	3	22	8
subjects prohibited	3	23	9
ACCUSED			
criminal offense, held when	6	10	28
ADJOURNMENT			
senate or house	3	16	4
ADMISSION OF EVIDENCE	6	9	27
AGRICULTURAL COLLEGE			
contracts of directors—ratification by state	13	3	49
AGRICULTURAL LANDS			
drainage	21	6	64
ALIENS			
resident and citizens, no distinction	6	14	30
AMENDMENTS			
bills in either house	3	20	6
emergency clause—tenure of office	3	1	2
prohibition	3	19	5
submission	3	19	5
submission, separate	23	1	65
APPEAL			
circuit court	5	29	21
limit of by city charter	5	34	22
records—complaint	6	7	26
supreme court	6	20	31
writ of from circuit and supreme courts	5	18	17
APPOINTMENT			
governor's power to	4	8	11
legislator may not be during term	3	12	4
APPORTIONMENT			
congressional	19	1	61
legislative	3	5	3
school funds	8	3	34
APPRAISAL			
school lands—board of	8	4	34

	Art.	Sec.	P.
APPROPRIATION			
bill for—items disapproved by governor—procedure.	4	10	12
bill, general—embraces what	12	2	47
sectarian school aid forbidden	6	3	24
separate bills	12	2	47
special—misuse of	11	9	46
ARMS			
right to bear	6	24	32
ARTESIAN WELLS			
assessment for	11	2	43
taxation for	10	2	41
ARTICLE			
I, Name—boundary		2	1
II, Division of powers of government		1	1
III, Legislative department		1-28	1-10
IV, Executive department		1-13	10-12
V, Judicial department		1-38	13-23
VI, Bill of rights		1-27	23-32
VII, Election and rights of suffrage		1-9	32-33
VIII, Education and school lands		1-17	33-37
IX, County and township organization		1-7	37-40
X, Municipal corporations		1-3	40-42
XI, Revenue and Finance		1-12	42-47
XII, Public accounts and expenditures		1-4	47-48
XIII, Public indebtedness		1-8	48-54
XIV, State institutions		1-5	54-56
XV, Militia		1-7	56
XVI, Impeachment and removal of officers		1-8	56-57
XVII, Corporations		1-20	57-60
XVIII, Banking and currency		1-3	60-61
XIX, Congressional and legislative apportionment		1-2	61
XX, Seat of government		1-3	61-62
XXI, Miscellaneous		1-4	62-64
XXII, Compact with United States		1	64-65
XXIII, Amendments to the Constitution		1-2	65-66
XXIV, Prohibition			66
XXV, Minority representation			66
XXVI, Schedule and ordinance		17-18	67-68
XXVII, Intoxicating liquors			68
XXVIII, Investment of school moneys		1	68
ASSAULT			
circuit court jurisdiction	5	14	17
ASSEMBLE			
right to	6	4	24
ASSESSMENT			
credits	11	7	44
damages—jury trial	17	18	60
taxation	6	12	28
unorganized county—action for fees	5	16	17
ATTORNEY			
circuit and supreme judges may not act as	5	31	21
ATTORNEY GENERAL			
certiorari—elections in unorganized counties	5	2	13
election	4	12	12
see also State's Attorney.			

	Art.	Sec.	P.
BAIL			
capital offense—proof—burden of	6	8	27
excessive not required	6	23	32
BALLOT			
certification of names—pleadings—demurrer	6	19	31
see Elections			
BANKING			
laws affecting	6	18	31
prohibitions	6	1	23
stockholders—liability—suit by creditor	18	3	61
BASTARDY			
jurisdiction of county court	5	21	19
BILL OF RIGHTS	6	1-27	23-32
BILL			
amended by either house	3	20	6
enrolled as evidence	3	1	2
originate in either house	3	20	6
presented to governor—disapproval—procedure	4	9	12
reading three	3	17	4
see also Appropriations			
BOARD			
charities and corrections, **see State Institutions**			
regents, **see State Institutions**			
BONDS			
county, to refund warrants	13	4	50
educational, payment	13	5	51
state, sale of to meet losses	13	2	49
state, school funds	8	2	33
see also Corporations.			
BONDS, CREDITS, ETC.			
taxation of	11	4	44
BOUNDARY			
county—special laws changing	3	23	9
county—validity of act changing	3	21	7
see also County			
state, **see State.**			
BRAND AND MARK COMMISSION			
Fees—right of secretary of state to receive	4	13	12
BRIBERY			
governor, penalty	4	11	12
state officials	3	28	10
CAPITAL OFFENSE			
bail—proof—burden of	6	8	27
CENSUS	3	5	3
CERTIFICATION OF NAMES			
ballot—pleadings—demurrer	6	19	31
CERTIORARI			
see Courts			
CHAMBER COURT			
see Courts.			
CHARITIES AND CORRECTIONS			
see State Institutions			
CHARGE TO JURY			
action for libel and slander	6	5	24

	Art.	Sec.	P.
CHARTER			
city, town, village, cannot be changed by special act	3	23	9
see also Municipal Corporations.			
see Corporations.			
CIRCUITS	5	15	17
increase	5	17	17
courts, **see Courts.**			
CITY			
see Municipal Corporations.			
CLASS LEGISLATION			
candidates—primary election law	6	18	31
CLERK			
supreme court	5	12	16
CLERK OF COURTS			
see County Officers			
COMMERCE, INTERSTATE			
statutes affecting	3	21	6
COMMISSIONS			
special—delegation of municipal functions	3	26	9
COMMITTEE OF THE WHOLE			
open unless business is secret	3	15	4
COMMON CARRIERS			
construction of lines	10	3	41
telegraph—authority to construct	17	11	59
telephone—rights of city council—of corporations	10	3	41
COMPENSATION			
legislators	3	6	3
property taken for public use	6	13	28
state officials	21	2	62
streets—use	6	13	30
COMPLAINT			
allegation—damages—injunction—eminent domain	6	13	29
appeal—records	6	7	26
CONSTITUTIONAL CONVENTION	23	2	66
CONSTRUCTION			
laws	3	21	6
CONTEMPT	6	7	25
CONTRACTS			
corporations	17	5	58
insurance—laws affecting	6	12	28
laws affecting	3	22	8
legislator must not be interested in with state	3	12	4
sectarian school	6	3	24
sale—school lands—default—execution	8	5	34
CONVENTION, CONSTITUTIONAL	23	2	66
CORPORATIONS			
action against—prejudiced juror	17	8	58
business specified in charter—real estate holding—power to tax	17	7	58
bonds—stock—issue—increase	17	8	58
charter			
legislative powers over	17	9	58
regulations	17	1-3	57
contracts—action against	17	8	58

	Art.	Sec.	P.
CORPORATIONS—Continued			
election of directors—votes how cast	17	5	57
eminent domain—compensation	17	18	59
foreign—agent—office	17	6	57
include what organizations	17	19	60
railway			
consolidation forbidden	17	14	59
main office—records contain what—reports	17	12	59
public highway	17	15	59
rates—legislative control	17	17	59
rights	17	16	59
rolling stock is personal property liable to execution and sale	17	13	59
taxation	11	3	44
TELEGRAPH			
regulations	17	11	44
see also Common Carriers, Corporations.			
CORRUPT SOLICITATION			
see Bribery.			
COUNTY			
affairs not regulated by special laws	3	23	9
bonds to refund warrants	13	4	50
boundary			
change—submission to vote—notice of	9	1	37
change by special act	9	1	37
id.	3	23	9
validity of special acts	3	21	6
courts, **see Courts.**			
indebtedness—validity of act authorizing funding	3	21	8
insane—charge—estate—support	3	23	9
judge—qualifications	5	10	15
id. probate	5	2	13
officers			
election—nomination—party convention	9	6	39
qualifications	9	7	40
named—terms—compensation	9	5	39
special acts—clerk of courts—salary	9	6	39
organization			
area	9	1	37
circuit court—term of	5	27	20
legislative duty	9	4	39
seat			
legislature cannot change by special act	3	23	9
majority vote—mandamus—resubmission	9	2	38
petition for removal—irregular proceedings—records—mandamus	9	3	39
withdrawal of signer's name	9	3	39
removal	9	3	39
temporary	9	1	38
unorganized			
assessment—action for fees	5	16	17
taxation	3	21	8
COURT CIRCUIT			
appeal—mandamus—powers	5	29	21
writ of—limitations	5	18	18

	Art.	Sec.	P.
COURT CIRCUIT—Continued			
chamber orders—writs	5	14	16
clerk			
compensation—duties—election—vacancy	5	32	21
judge—qualification	5	25	20
jurisdiction—misdemeanor—writs	5	14	17
terms—special—newly organized county	5	27-28	20
time of holding	5	27	20
COURT COUNTY			
bastardy proceedings—jurisdiction	5	21	19
criminal jurisdiction	5	20	18
judge—qualifications	5	10	15
same	5	25	20
term	5	19	18
jurisdiction—limit—special	5	20	18
powers	5	20	19
COURT GENERAL			
enumerated	5	1	13
judges			
election to other office during term void	5	35	22
ineligiblity	5	36	22
salary	5	30	21
salary	21	2	62
tenure of office	5	36	22
vacancies—filled how	5	37	22
COURT JUSTICE OF THE PEACE			
jurisdiction	5	22	19
COURT			
laws relating to	5	34	21
mandamus to compel delivery of seal and records	5	37	22
open to all	6	20	31
COURT POLICE			
embezzlement prosecution—jurisdiction	5	1	13
same	5	23	19
COURT SUPREME			
appeals from circuit court	5	2	13
writ of—limitations	5	18	17
certiorari—Atty. Gen.—elections	5	2	13
clerk	5	12	16
error—writ—limitations	5	18	17
injunction—jurisdiction	5	3	14
judges			
districts elected from	5	11	16
qualifications	5	10	15
may not act as an attorney	5	31	21
number	5	5	15
presiding	5	9	15
salary	5	30	20
term	5	8	15
jurisdiction	5	2	13
jury trial not allowed	5	3	14
mandamus—county judge—qualification	5	2	13
opinion at request of governor	5	13	16
quorum necessary to pronounce decision	5	7	15
reporter	5	12	16

	Art.	Sec.	P.
COURT SUPREME—Continued			
terms—when—where	5	4	15
writs issuing from	5	3	14
CREDITS			
assessment of—deduction of indebtedness	11	7	44
CRIMINAL			
action			
conviction—error—reversal	6	9	27
testimony against self	6	9	27
jurisdiction			
county court	5	20	18
offense			
accused held when	6	10	28
prosecution			
rights of defendant	6	7	25
CRUEL PUNISHMENT			
infliction of forbidden	6	23	32
DAMAGES			
eminent domain	6	13	28
grade—municipal liability	6	13	30
DEBT			
county—validity of act funding	3	21	8
imprisonment for	6	15	30
loss to school moneys funded debt	8	13	37
DEFINITIONS			
annexed	5	2	14
attached	5	2	14
any city	13	5	51
beneficially interested	5	2	14
next general election	5	3	15
	5	37	22
public officer	12	3	47
purpose	10	2	40
term	12	3	47
treason	6	25	32
DIVERSION OF FUNDS			
see Municipal Corporations			
DIVISION			
powers of government	2	1	1
DIVORCE			
legislature may not grant by special act	3	23	9
DONATIONS			
lands for schools—appraisal	8	8	35
DRAINAGE			
agricultural lands	21	6	64
DUE PROCESS OF LAW			
tax receipt—collection—evidence	6	2	23
EASEMENT			
eminent domain—ultra vires	6	13	29
ELECTIONS			
ballot			
certification of names—pleadings—demurrer	6	19	31
prevention of fraud	7	3	33
contested—certificate of—omission—pleadings	5	24	20
county officers	9	6	39

	Art.	Sec.	P.
ELECTIONS—Continued			
elector			
disqualified	7	8	33
freedom from arrest	7	5	33
qualifications	7	1	32
residence not lost	7	6	32
free and equal	6	19	31
general—biennial	7	4	33
governor—vote for	4	3	10
judges			
day for	5	26	20
vacancy—quo warranto—appointment	5	3	14
legislature—viva voce—recorded in journals	3	14	4
next general defined	5	37	22
primary			
class legislation	6	18	31
method of nomination	7	1	32
soldiers vote where	6	19	31
unorganized—counties—illegal—certiorari	5	2	13
women vote when	7	9	33
writ of—legislative vacancy	3	10	4
ELECTOR, See Elections			
ELIGIBILITY, see Officer, State, etc.			
EMERGENCY CLAUSE	3	1	1
	3	2	2
EMINENT DOMAIN			
compensation—just compensation	6	13	28
complaint—allegations—damages—injunction	6	13	29
easement—ultra vires	6	13	29
right of legislature as against corporations	17	4	57
roads—township assessments—municipal corporations	6	13	29
ENACTING CLAUSE			
laws	3	18	5
	3	1	2
ENCAMPMENT GROUNDS			
lands granted for	4	4	10
ENROLLED BILLS			
evidence	3	1	2
ERROR			
action for libel—charge to jury	6	5	24
criminal action—conviction—reversal	6	9	27
evidence—trial	6	7	26
writ from circuit and supreme courts	5	18	17
ESTATE			
insane person—charge—support	3	23	9
EVIDENCE			
admission of letter	6	8	27
enrolled bills	3	1	2
error	6	7	26
joint resolution	3	19	5
legislative journals	3	13	4
seduction—promise to marry	6	10	28
tax receipt	6	2	23
EXECUTIVE OFFICE			
succession to when vacant	4	7	11

	Art.	Sec.	P.
EXEMPTIONS			
deduction of indebtedness	11	2	43
homestead	21	4	63
laws affecting	3	22	8
property exempt	11	5	44
taxation—occupation	6	17	30
tax receipt—evidence	11	7	45
EXPENDITURE OF FUNDS, see Municipal Corporations.			
EX POST FACTO			
laws forbidden	6	12	28
EXTRA COMPENSATION	12	3	47
FEES			
legislature may not increase or decrease by special acts	3	23	9
secretary of state's right to take from Brand and Mark Commission	4	13	12
FELONY			
legislature forbidden to attaint person of	6	22	32
profit from state, county, etc., moneys	11	11	47
FERRIES			
legislature not to authorize by private act	3	23	9
FINES			
excessive—not to be imposed	6	23	32
imprisonment for	6	15	30
legislature not to remit by special act	3	23	9
FIRE COMPANIES			
compensation	13	1	48
FOREIGN CORPORATIONS, see Corporations.			
FORMER JEOPARDY			
conviction for rape	6	9	27
FUNDS			
county indebtedness—validity of acts	3	21	8
laws relating to particular funds	10	2	40
school			
apportionment—warrants	8	7	35
investment—duties of officers	8	11	36
losses to—state responsibility	8	7	35
losses—funded debt	8	13	37
taxation for	8	15	37
use for sectarian aid forbidden	8	16	37
GAMBLING			
legislature not to authorize	3	25	9
GENERAL ELECTIONS			
biennial	7	4	33
GOVERNMENT			
division of powers	2	1	1
GOVERNOR			
bills presented to—dissapproval—procedure	4	9	12
bribery—penalty	4	11	12
commander-in-chief of militia	4	4	10
convene legislature on special occasion	4	4	10
disapprove sale of school lands	8	12	37
election	4	3	10
issues writ of election	3	10	4
message	4	4	10

	Art.	Sec.	P.
GOVERNOR—Continued			
powers			
commissions officers of the militia	15	4	56
pardon, reprieves, etc	4	5	11
remits fines, etc.	4	5	11
removal of officers	16	4	55
requests opinions from supreme court	5	13	16
qualifications	4	2	10
term	4	1	10
vacancy—office devolves on Lt. Gov.	4	6	11
succession when Lt. Gov. cannot act	4	7	11
veto			
bribery—penalty	4	11	12
forbidden when	3	1	2
GRADE			
damages—municipal liability	6	13	30
GRAND JURY			
abolished or modified	6	10	28
GRANT			
land to state for militia	4	4	10
HABEAS CORPUS			
suspension of writ	6	8	27
HEIR AT LAW			
legislature may not constitute one person heir at law of another by special act	3	23	9
HIGHWAYS			
assessment of damages—jury trial	17	18	60
HOMESTEAD			
exemption	21	4	63
change of entry—rejection	11	5	44
forced sale	21	4	63
mechanics' liens	21	4	63
HOUSE			
impeachment—sole power of	16	1	56
journal—evidence	3	13	4
judges own election returns—members qualifications	3	9	3
presiding officer—duties	3	19	5
rules for proceedings	3	9	4
IMPEACHMENT			
concurrence of majority of members necessary	16	1	56
copy of served on accused	16	7	57
house has sole power to try	16	1	56
lieutenant governor does not act when	16	6	57
officer accused shall not exercise office	16	5	57
persons liable—causes	16	3	56
second offense not liable	16	8	57
senate tries—duties	16	2	56
IMPRISONMENT FOR DEBT	6	15	30
INCREASE OF OFFICIAL SALARY	12	3	47
INDEBTEDNESS			
public—limited	13	1	48
INDIAN RESERVATION	22	1	64

	Art.	Sec.	P.
INDICTMENT			
intoxicating liquors—sufficiency	6	7	25
joint charge—conviction	6	7	27
language of sufficiency	6	7	25
process—sufficiency of	5	38	22
INITIATIVE			
per centum to invoke	3	1	2
INJUNCTION			
eminent domain. **See also Court-Supreme**	6	13	28
INSANE			
county charge—estate—support	3	23	9
INSTITUTIONS, see State Institutions			
INSURANCE			
contracts—statutes affecting	6	12	28
policy form of	3	17	4
INSURANCE COMMISSIONER			
removal of	16	3	56
INTERPRETATION			
laws	3	21	6
INTERSTATE COMMERCE	3	21	6
INTOXICATING LIQUORS			
indictment—sufficiency	6	7	25
license—police regulation—fee	11	2	43
married woman's right of action	3	21	8
validity of statutes—title of act	3	21	6
INVESTMENT OF SCHOOL FUNDS			
officers duties	8	11	36
JEOPARDY			
twice for same offense	6	9	27
JOINT CHARGE			
indictment—conviction	6	7	27
JOINT RESOLUTION			
evidence	3	19	5
signed by presiding officers	3	19	5
title of	3	19	6
JOURNALS			
examination of—judicial notice of taken	12	3	47
legislative as evidence	3	13	4
JUDGMENT			
tax levy to satisfy	10	2	40
JUDICIAL			
circuits—increase of	5	17	17
power vested in	5	1	13
JURISDICTION			
justice of the peace **see also Courts**	5	22	19
JUSTICE OF PEACE			
jurisdiction **see also Courts**	5	22	19
JUROR			
number of in civil cases	6	6	24
prejudiced	17	8	58

	Art.	Sec.	P.
JURY			
charge to—action for libel and slander	6	5	24
trial			
delay—discharge	6	7	25
probate proceedings	6	6	25
right to—number of jurors	6	6	24
violations	6	6	24
waiver—non waiver	6	6	25
right of in action for libel and slander	6	5	24
LAND			
donated for schools—appraisal	8	8	35
grant to state for militia	4	4	12
school			
board of appraisal	8	4	34
defined	8	2	33
lease—purposes	8	9	35
protection—legislative duty	8	14	37
sale	8	4	34
contract—default—execution	8	5	34
governor may disapprove	8	12	37
price per acre	8	5	34
trespasser's claim	8	10	35
LANGUAGE			
indictment	6	7	25
statutes	3	21	6
LAWS			
banking	6	18	31
construction	3	21	6
contracts	3	22	8
courts	5	34	22
effective when	3	22	8
emergency clause—two-thirds vote required	3	22	8
also	3	1	2
enacting clause	3	1	2
also	3	18	5
exemptions	3	22	8
ex post facto	6	12	32
granting immunities, etc., forbidden	6	18	31
impairing contracts	6	12	28
initiative and referendum	3	1	2
language—title	3	21	8
passage—majority vote	3	18	5
police power	6	18	31
prohibited subjects	3	23	9
proposal	3	1	2
special forbidden	3	23	9
subject single expressed in title	3	21	7
submission	3	1	2
suspension	6	21	32
violation of right to trial by jury	6	6	24
see also **Statutes.**			
LEASE			
school Lands	8	9	35

	Art.	Sec.	P.
LEGISLATURE			
adjournment	3	16	4
apportionment	3	5	3
appropriation bills—governor's disapproval—procedure	4	10	12
assessment and levy of taxes	11	2	43
bills—governor's disapproval—procedure	4	9	12
composition	3	1	2
committee of the whole—open when	3	15	4
duty			
county organization	9	4	39
municipal corporations	10	1	40
school lands—protection	9	14	37
elections—viva voce	3	14	4
eminent domain—right against corporations	17	4	57
felony—treason—not to attaint persons	6	22	32
gambling—not to authorize	3	25	9
houses judge election returns and qualification of members	3	9	3
journal—evidence	3	13	4
laws prohibited	3	23	9
measures—proposal—submission	3	1	2
member			
appointment to other office during term	3	12	4
compensation	3	6	3
mileage	3	6	3
number of in each house	3	2	2
oath			
administered by whom—form—penalty for refusal to take—swearing falsely—violation of—penalty	3	8	3
persons disqualified	3	3	2
privileged from arrest	3	11	4
prohibitions	3	12	4
qualifications	3	3	2
term	3	6	3
vote—viva voce—record in journal	3	14	4
militia	15	2	56
mining and metallurgy—teaching of	14	5	55
obligations—cannot extinguish	3	24	9
power			
control of railroad rates	17	15	59
vested in	3	1	1
prohibitions			
law authorizing street railway	17	10	58
special acts on certain subjects	3	23	9
quorum—majority of each house	3	9	3
rules—each house determines	3	9	4
schools maintained	8	1	33
sessions			
biennial	3	2	2
length of	3	6	3
open unless business secret	3	15	4
when, where held	3	7	3
suits against state to direct in what court	3	27	10

	Art.	Sec.	P.
LEGISLATURE—Continued			
vacancy—writ of election to fill	3	10	4
taxation, see **State Taxation.**			
LIABILITIES—RELEASE OF	3	24	9
LIBEL			
evidence—absence of records	6	5	24
publication of truth as defense	6	5	24
LICENSE			
tax—classification	6	17	30
LIEUTENANT GOVERNOR			
election—tie vote	4	3	10
impeachment of governor may not act as member of court	16	6	57
qualifications	4	2	10
president of senate—has only casting vote therein	4	7	12
term	4	1	10
LIQUOR, see Intoxicating Liquors			
MAJORITY VOTE			
county seat election	9	2	38
laws, passage	3	18	5
MANDAMUS—TO COMPEL			
county commissioners to act	9	2	38
delivery of records and seal	5	37	22
granted in another circuit	5	29	21
See **Court Supreme**			
MARRIED WOMEN			
right of action—intoxicating liquor	3	21	8
MECHANICS' LIEN			
homestead	21	4	63
MILEAGE			
members of legislature	3	6	3
MILITIA			
banners, records, etc.	15	6	56
enrollment not compulsory	15	7	56
defined	15	1	56
governed by U. S. army regulations	15	3	56
governor commander-in-chief	4	4	10
legislative duties	15	2	56
officers commissioned by governor	15	5	56
subordinate to the civil power	6	16	30
MINING—METALLURGY	14	5	55
MINOR			
real estate of cannot be sold or mortgaged by special legislative act	3	23	9
MISDEMEANOR			
jurisdiction of circuit court	5	14	16
MONEY			
see **Funds, Public Money**			
MONOPOLIES			
forbidden	17	20	60
MOTION TO DISMISS			
action in county court	5	20	18
MUNICIPAL CORPORATIONS			
any city—defined	13	5	51

	Art.	Sec.	P.
MUNICIPAL CORPORATIONS—(Continued)			
appeals limited—city charter—special acts	5	34	22
city			
council—tax levy—amount	10	1	40
indebtedness—increase—water plant	13	4	51
organization—charter—re-organization	10	1	40
contracts—profits from forbidden	11	11	47
expenditure—limit of	10	2	40
indebtedness			
annual tax to pay interest	13	5	51
limit—money in sinking fund—incurring debt —submission to vote—majority	13	4	50
warrants—validity	10	2	40
legislative duty	10	1	40
liability—grade—damages	6	13	30
particular funds	10	2	41
powers	11	10	47
roads—township assessment	6	13	29
taxation—fund—use—diversion of	10	2	41
tax levy to satisfy judgment	10	2	41
tax—use	11	8	45
NUISANCE			
fine for keeping and maintaining	6	23	32
NUMBER OF JURORS, see Jury.			
NURSERY STOCK			
sale—particular persons—deprivation of life, liberty or property	6	2	23
OATH—MEMBER OF LEGISLATURE			
administered by whom—form of—penalty for refusal to take—swearing falsely—violation—penalties	3	8	3
OATH OF OFFICE			
state officials	21	3	63
OBLIGATIONS, LIABILITIES, ETC.			
legislature cannot extinguish	3	24	9
OCCUPATIONS			
taxation—exemptions	6	17	30
OFFICE			
oath of	21	3	63
tenure of	3	1	2
OFFICER—STATE			
bribery—penalty	3	27	10
enumerated	4	12	12
oath	21	3	63
removal	16	3	56
term	4	12	12
OFFICER			
presiding of each house signs bills, etc.	3	19	5
ORIGIN OF BILLS	3	20	6
ORGANIZED COUNTY, See County.			
PARDONS			
governor's power	4	5	11
PARTIES			
action in county court	5	20	18
PATENT			
school lands—issues when	8	6	35

	Art.	Sec.	P.
PENALTY			
bribery—state officials	3	27	10
see also	3	8	3
PER DIEM	3	6	3
PERSONS			
disqualifications for voting	7	8	35
legislature may not change name by special act	3	23	9
PERSONAL SECURITY	6	11	28
PETITION			
removal of county seat	9	3	38
right to	6	4	24
PLACE			
name cannot be changed by special act of legislature	3	23	9
POLICE MAGISTRATE			
jurisdiction—prosecution for embezzlement	5	1	13
see also	5	23	19
POLICE POWER			
laws	6	18	31
POLICY			
insurance—form of	3	17	4
POWER OF COUNTY COURT	5	20	19
PREAMBLE			1
PRESIDING OFFICER			
duty to sign bills and joint resolutions	3	19	5
PRIMARY ELECTION			
candidates—class legislation	6	18	31
method of nomination	7	1	32
PRINTING, see Public Printing.			
PRIVATE PROPERTY			
public use—compensation	6	13	30
PRIVILEGES, IMMUNITIES, ETC.			
legislature may not grant by special act	3	23	9
see also	6	18	31
PRIVILEGE COMMUNICATION			
slander and libel	6	5	24
PROBATE			
county judge—qualifications	5	2	13
PROCEDURE			
action—bastardy	5	21	19
appropriation—disapproval of governor	4	10	12
bills—disapproval of governor	4	9	12
bribery investigation	3	28	10
legislature—rules for	3	9	3
probate	6	6	25
PROCESS			
indictment—sufficiency of	5	38	23
runs in the name of State of South Dakota	5	38	23
to secure witness	6	7	26
PROMISE OF MARRIAGE			
seduction—evidence	6	10	28
PROOF			
burden of—evident proof	6	8	27

	Art.	Sec.	P.
PROSECUTION			
carried on in the name and by the authority of State of South Dakota	5	38	23
criminal—rights of accused	6	7	25
PUBLIC			
officer—compensation	21	2	62
see also Legislature, State, County Officials			
indebtedness			
agricultural college—contracts—ratification	13	3	49
amount authorized	13	2	49
limit of	13	1	48
settlement of territorial debts	13	6	51
money			
drawn when	12	1	47
particular funds	10	2	41
profit from forbidden	11	11	47
statement of receipts and expenditures	11	12	47
itemized and published	12	4	48
lands, **see Lands**			
printing	6	5	24
appropriations—contracts by state—incurring indebtedness	11	9	46
use			
private property taken for	6	13	28
PUBLICATION			
right of	6	5	24
truth as defense in libel or slander	6	5	24
QUORUM			
majority of each house	3	9	3
QUO WARRANTO, see Court Supreme.			
RAILROADS, see Common Carriers, Corporations.			
RAPE.			
former jeopardy	6	9	27
RATES			
see Corporations, Common Carriers.			
RECORD			
appeal—complaint	6	7	26
mandamus to compel delivery of	5	37	22
REGENTS			
see State Institutions—Educational.			
RELIGIOUS WORSHIP			
right of	6	3	24
REFERENDUM			
per centum required to invoke	3	1	2
REPORTER			
supreme court	5	12	16
REPRESENTATIVE			
see Legislature.			
RESIDENCE			
sailor, soldier of U. S. army	7	7	33
REVERSAL OF JUDGMENT			
criminal action—error	6	9	27
RIGHTS OF MARRIED WOMEN	21	5	64

	Art.	Sec.	P.
ROADS			
municipal corporations—other corporations—township assessment	6	13	29
RULES			
legislative—each house determines	3	9	4
PROHIBITION			
amendment relating to	3	19	5
SALARY			
judges—all courts	5	30	21
see also Compensation.			
SCHOOL			
funds			
apportionment	8	3	34
investment—duties of officers	8	11	36
loss to—funded debt	8	13	37
responsibility of state	8	7	35
sectarian aid forbidden	8	16	37
state bonds—limitation	8	2	33
taxation for	8	15	37
lands			
boards of appraisal	8	4	34
defined	8	2	33
lease—pasturage—meadow only	8	9	35
legislative duty to protect	8	14	37
patent issues when	8	5	34
price per acre	8	5	34
sale	8	4	34
commissioner's duty—governor approves	8	6	35
contract of—default—execution	8	5	34
governor may disapprove	8	12	37
legislative duties	8	1	33
may not pass special act for management	3	23	9
officers must not be interested in sale of books etc.	8	17	37
sectarian aid forbidden	6	3	24
SEAL AND COAT OF ARMS	21	1	62
SEAL OFFICIAL			
mandamus to compel delivery of	5	37	22
SEARCHES, SEIZURES, ETC.			
right of protection from	6	11	28
SEAT, see County.			
SECTARIANISM FORBIDDEN	6	3	24
	8	16	37
SECRETARY OF STATE			
member of Brand Commission—fees—right to	4	13	12
SEDUCTION			
evidence—promise to marry	6	10	28
SENATE, see Legislature			
SESSION, see Legislature			
SETTLEMENT OF TERRITORIAL DEBT	13	6	51
SLANDER			
comunication privileged	6	5	24
evidence—absence of records	6	5	24
SOLDIERS, SAILORS—U. S.			
not deemed residents	7	7	33

	Art.	Sec.	P.
SPECIAL ACTS			
clerk of courts	9	6	39
commissions—legislature forbidden to authorize	3	26	9
legislature forbidden to pass	3	23	9
term—circuit court	5	28	20
see also **Municipal Legislation**			
SPEECH			
freedom of	6	5	24
STATE			
bonds—limitation—**school funds**	8	2	33
boundaries	1	1	1
expenditures—special appropriations—mis-use	11	9	46
institutions—educational			
enumerated	14	3	55
regents control			
appointment	14	3	55
powers	14	4	55
removal	14	4	55
tenure of office	14	3	55
vacancy	14	3	55
institutions—charitable and penal			
enumerated	14	1	54
board of control			
appointment			
members			
tenure of office			
vacancy	14	2	54
name	1	1	1
officials			
compensation	21	2	62
defined	12	3	48
duties—powers prescribed by law	4	13	12
enumeration	4	12	12
office kept at capitol	4	12	12
tenure of office	4	12	12
taxation, see **Taxation**			
warrants			
auditor draws when	11	9	45
STATE'S ATTORNEY			
compensation work done for R. R. Comrs. while member of legislature	3	12	4
election contested—certificate of nomination—omissions in—pleadings	5	24	20
member of legislature—appointment to other office during term	3	12	5
qualifications	5	24	20
STATEMENT OF PUBLIC EXPENDITURES	12	4	48
STATUTES CONSTRUED OR REFERRED TO			
compiled Laws			
535	5	2	14
1302-1324	6	13	29
	17	18	60
1489	5	24	20
1671-1679	10	2	41
1891	5	24	20

	Art.	Sec.	P.
STATUTES CONSTRUED OR REFERRED TO—(Continued)			
2462	21	4	63
5126-7	21	4	63
5139	21	4	63
5213	5	34	22
5507	5	2	14
6147	6	7	26
6509	5	14	17
7043	5	14	17
7119	5	1	13
7312-7318	6	7	27
7429	5	14	17
Revised Political Code Sections			
810	9	6	40
1275	5	34	22
Revised Civil Code Sections			
554	10	3	42
664	3	17	4
864	18	3	61
Revised Justices' Code Section			
148	5	34	22
Revised Code of Criminal Procedure Sections			
395	6	7	26
630	6	7	25
Sessions Laws			
1887, Chap. 175	5	2	14
1899, " 41	6	12	28
	13	5	51
1890, Chap. 5	14	2	55
" " 6	5	13	16
" " 37	10	1	40
" " 64	9	2	38
" " 78	5	20	18
" " 86	3	22	8
	21	4	63
" " 101	3	21	7
	6	7	25
	6	23	32
" " 150	11	7	45
1891 " 6	11	9	46
" " 15	5	16	17
" " 21	10	2	41
" " 27	6	1	23
	6	18	30
" " 80	10	2	41
" " 94	6	13	29
" " 99	11	9	46
1893 " 49	5	16	17
1895 " 38	3	19	5
" " 86	3	19	5
" " 89	6	12	28
" " 103	10	2	41
1897 " 10	6	12	5
	3	12	4
" " 41	3	21	7

	Art.	Sec.	P.
STATUTES CONSTRUED OR REFERRED TO—(Continued)			
1897, Chap. 41	3	23	9
" " 55	5	2	13
	5	34	22
" " 72	3	21	8
" " 72	11	2	43
" " 83	5	13	16
" " 84	3	24	9
" " 90	4	13	12
1901 " 65	3	1	2
" " 94	3	21	8
	13	4	50
" " 110	21	2	63
1903 " 86	14	2	55
" " 190	6	17	30
1905 " 163	3	26	9
1907 " 139			
" " 194	6	6	23
subjects of legislation forbidden	3	23	9
validity	3	18	4
see also Law.			
STOCKS, BONDS, ETC., see Corporations.			
STREETS			
use—compensation	6	13	30
SUBJECT OF A LAW SINGLE	3	21	6
SUBMISSION OF AMENDMENTS	3	19	5
SUCCESSION TO EXECUTIVE OFFICE	4	7	11
SUITS AGAINST STATE			
legislature directs in what court to be brought	3	27	10
SUPREME COURT, see Court			
SUSPENSION OF LAWS	6	21	32
TAXATION			
annual tax—legislature to provide for	11	1	42
assessment	6	12	28
bonds, credits, etc	11	4	44
corporations	11	3	44
exemption—occupations	6	17	30
exemption—deduction of indebtedness	11	2	43
levy—object of	11	8	45
license—classification	6	17	30
non-exemption	11	6	44
property exempt	11	5	44
real property of corporations	17	7	58
school funds	8	15	37
state—limitations—public debt—legislative powers uniform	11	2	43
unorganized counties	3	21	8
value of property	11	2	44
TAX			
annual to pay interest on municipal debt	13	5	51
levy			
amount—city council	10	1	40
to satisfy judgment against city	10	2	41
receipt—as evidence	6	2	23
	11	7	45

	Art.	Sec.	P.
TENURE OF OFFICE			
judges	5	36	22
representatives—senators	3	6	3
TELEGRPAH, see Common Carriers.			
TELEPHONE, see Common Carriers.			
TERM, see Court, State Officials.			
define	12	3	48
TERRITORIAL DEBT	13	6	51
TERRITORIAL STATUTES			
compensation of fire companies	13	1	48
TESTIMONY			
bribery investigations	3	28	10
TITLE			
express subject of law	3	21	7
joint resolution	3	19	5
laws—language	3	21	8
TOWN SUPERVISORS			
powers—expenditures of funds	10	2	40
TREASON			
defined—conviction for	6	25	32
legislature forbidden to attaint person of	6	22	32
TRIAL			
action—removal of	6	7	27
appeal to supreme court	6	20	31
delay—discharge	6	7	25
jury—right of	6	6	24
testimony—error	6	7	26
TRUSTS, ETC.			
forbidden	17	20	60
TRUTH			
libel and slander	6	5	24
ULTRA VIRES			
easement—eminent domain	6	13	29
UNORGANIZED COUNTIES			
elections illegal—certiorari	5	2	13
taxation	3	21	8
see Counties.			
USE			
streets—compensation	6	13	30
VACANCY			
clerk of circuit court	5	32	21
executive office—order of succession	4	6	11
judges			
filled how	5	37	22
quo warranto—elections—appointments	5	3	14
state office—governor fills by appointment	4	8	11
VALIDITY OF STATUTES			
evidence to impeach	3	13	4
VALUE OF PROPERTY			
taxation	11	2	44
VETO, see Governor.			
VOTE, see Election, Legislature, Majority Vote.			
WARRANTS			
auditor may draw when	11	9	45
city, **see Municipal Corporations**			

	Art.	Sec.	P.
WELLS, ARTESIAN	10	2	41
WITNESS			
process to secure	6	7	26
right of accused in criminal action	6	7	25
WOMAN			
voting rights	7	9	33
WOMAN			
married—right of action	21	5	64
WORDS AND PHRASES			
see Definitions.			
WORDING OF LAWS			
title	3	21	8
WORSHIP			
right to	6	3	24
WRIT			
appeals from Circuit Court	5	18	17
certiorari, **see Court Supreme**			
election—governor issues	3	10	4
error from supreme and circuit courts	5	18	17
injunction, **see Court Supreme**			
mandamus, **see Court Supreme.**			
WRITING			
freedom of	6	5	24

PARALLEL REFERENCES

Article of Constitution	Where discussed in the Constitutional Debates
ART. I.	
	Sec. 1, Vol. 1, p. 146, 431, 541, 567, 585.
ART. II.	
	Vol. 2, p. 385.
ART. III.	
	Sec. 1, Vol. 1, p. 138.
	Sec. 2, Vol. 1, p. 170, 178, 365.
	Vol. 2, p. 342.
	Sec. 3, Vol. 1, p. 182.
	Sec. 4, Vol. 1, p. 209.
	Sec. 5, Vol. 1, p. 185, 206.
	Sec. 6, Vol. 1, p. 218.
	Sec. 7, Vol. 1, p. 615, 625.
	Sec. 12, Vol. 1, p. 223.
	Sec. 13, Vol. 1, p. 231.
	Sec. 20, Vol. 1, p. 233.
	Sec. 21, Vol. 1, p. 228.
	Sec. 22, Vol. 1, p. 235.
	Sec. 23, Vol. 1, p. 229.
	Sub. div. 4, Vol. 1, p. 319.
	Sub. div. 7, Vol. 1, p. 318.
	Sub. div. 9, Vol. 1, p. 124.
	Sub. div. 11, Vol. 1, p. 313, 634.
	Sec. 28, Vol. 1, p. 241.
Art. IV.	
	Sec. 1, Vol. 1, p. 143, 276.
	Vol. 2, p. 478.
	Sec. 10, Vol. 1, p. 122.
ART. V.	
	Sec. 1, Vol. 1, p. 164.
	Sec. 4, Vol. 1, p. 255.
	Sec. 5, Vol. 1, p. 260.
	Sec. 10, Vol. 1, p. 264.
	Sec. 11, Vol. 1, p. 260, 267.
	Sec. 13, Vol. 1, p. 148.
	Sec. 14, Vol. 1, p. 266.
	Sec. 17, Vol. 1, p. 564.
	Vol. 2, p. 193.
	Sec. 18, Vol. 1, p. 269.
	Sec. 19, Vol. 2, p. 455.
	Sec. 24, Vol. 1, p. 269, 606.
	Sec. 25, Vol. 1, p. 270.
	Sec. 26, Vol. 2, p. 450.
	Sec. 32, Vol. 2, p. 278.
	Sec. 34, Vol. 1, p. 272.
	Sec. 37, Vol. 1, p. 273.
	Sec. 38, Vol. 1, p. 273.

Parallel References—Continued

Article of Constitution	Where discussed in the Constitional Debates
ART. VI.	
	Sec. 1, Vol. 1, p. 131.
	Sec. 3, Vol. 1, p. 339.
	Sec. 6, Vol. 1, p. 281.
	Sec. 7, Vol. 1, p. 289.
	Sec. 8, Vol. 1, p. 289.
	Sec. 9, Vol. 1, p. 290.
	Sec. 12, Vol. 1, p. 291.
	Sec. 13, Vol. 1, p. 125, 291, 303, 333.
	Sec. 18, Vol. 1, p. 124.
	Sec. 26, Vol. 1, p. 340.
ART. VII.	
	Sec. 1, Vol. 1, p. 123.
	Vol. 2, p. 311.
	Sec. 2, Vol. 1, p. 123, 397, 403, 633.
	Sec. 4, Vol. 1, p. 123, 393.
	Vol. 2, p. 470.
	Sec. 9, Vol. 1, p. 419.
ART. VIII.	
	Sec. 1, Vol. 2, p. 250.
	Sec. 4, Vol. 1, p. 171.
	Sec. 6, Vol. 1, p. 503.
	Sec. 8, Vol. 2, p. 252.
	Sec. 9, Vol. 1, p. 507.
	Sec. 11, Vol. 1, p. 499, 510, 593, 597.
	Sec. 13, Vol. 1, p. 515.
	Sec. 14, Vol. 2, p. 89.
ART. IX.	
	Sec. 2, Vol. 1, p. 449.
	Sec. 5, Vol. 1, p. 445, 607.
	Vol. 2, p. 427, 463, 470, 477.
	Sec. 6, Vol. 1, p. 445.
	Sec. 7, Vol. 1, p. 453.
ART. X.	
	Sec. 1, Vol. 1, p. 157, 229.
ART. XI.	
	Sec. 1, Vol. 7, p. 122, 458.
	Vol. 2, p. 495.
	Sec. 2, Vol. 1, p. 468, 543.
	Sec. 3, Vol. 1, p. 463.
	Sec. 4, Vol. 1, p. 149.
	Sec. 5, Vol. 1, p. 470.
	Sec. 6, Vol. 1, p. 471, 483, 491.
	Sec. 11, Vol. 1, p. 493.
ART. XII.	
	Sec. 2, Vol. 1, p. 125, 172.
ART. XIII.	
	Sec. 2, Vol. 1, p. 156.
	Vol. 2, p. 495.
	Sec. 4, Vol. 2, p. 515.
ART. XIV.	
	Sec. 1, Vol. 1, p. 547.
ART. XV.	
	Sec. 1, Vol. 1, p. 126, 187.

Parallel References—Continued

Article of Constitution	Where discussed in the Constitutional Debates
ART. XVII.	Sec. 1, Vol. 1, p. 133, 439. Sec. 4, Vol. 1, p. 109. Sec. 12, Vol. 1, p. 465. Sec. 13, Vol. 1, p. 545. Sec. 15, Vol. 1, p. 125. Sec. 18, Vol. 1, p. 109.
ART. XVIII.	Sec. 1, Vol. 1, p. 549.
ART. XIX.	Sec. 2, Vol. 1, p. 497.
ART. XX.	Sec. 1, Vol. 1, p. 401, 412, 437.
ART. XXI.	Sec. 1, Vol. 1, p. 147, 571. Sec. 2, Vol. 1, p. 520. Sec. 4, Vol. 1, p. 552.
ART. XXIII.	Sec. 1, Vol. 1, p. 371, 609.
ART. XXIV.	Sec.—, Vol. 1, p. 87, 174, 327, 368, 386. Vol. 1, p. 177, 368, 381.
ART. XXV.	Sec. —, Vol. 1, p. 177, 368, 381.
ART. XXVI.	Sec. 17, Vol. 1, p. 613. Vol. 2, p. 297, 395.